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Clk Sub Ct. U.S.

SUPREME COURT OF THE UNITED STATES.

No. ~~180.~~ 106.

WILLIAM DEHON, EX'OR OF THEODORE DEHON, DEC'D, INTERVENOR, APPELLANT, IN THE CASE OF THE UNITED STATES

vs.

C. S. DE BERNAL AND AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE

Aff'd with Cost.

Feb 13

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1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this first day of March, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Carmen S. de Bernal *et al.*, for "a lot at mission Dolores," was presented, and ordered to be filed and docketed with No. 671, and is as follows, to wit:

(Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *February* 9, 1854.

In case No. 671, C. S. de Bernal *et al.*, for a lot at Dolores, the counsel for the claimants filed the following affidavit, to wit:

(Vide page 9 of this transcript.)

In the same case the depositions of M. G. Vallejo and José Castro,
2 a witness in behalf of the claimants, taken before Commissioner Thompson Campbell, were filed.

(Vide pages 7 and 5 of this transcript.)

SAN FRANCISCO, *March* 8, 1854.

In the same case, the deposition of Jacob Antonio Morrenhout, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 8 of this transcript.)

SAN FRANCISCO, *April* 11, 1854.

On motion of the U. S. law agent, case No. 671 was ordered to be placed at the foot of the calendar of the 1st class cases on the final docket.

SAN FRANCISCO, *July* 21*st*, 1854.

Case No. 671 was submitted on briefs.

SAN FRANCISCO, *Aug.* 8*th*, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(Vide page 11 of this transcript.)

SAN FRANCISCO.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(Vide page 14 of this transcript.)

3 *Petition.*

To the honorable commissioners to settle private land claims in California:

The petitioners, Carmen Sibrian de Bernal, widow, and José Jesus Bernal, only child of José Cornelio Bernal, deceased, respectfully represent: That

about the year 1834, José Figueroa, governor of California, by virtue of authority in him vested, granted to the said José Cornelio Bernal a tract of land, near the mission of San Francisco de Asis or Dolores, in the present county of San Francisco, two hundred varas square; which lot of land was immediately taken possession of by the said Bernal, and improved, and has been in the possession of him, the petitioners, his widow and only child, thenceforward to the present time.

That the said Bernal died in California, A. D. 18 , leaving the petitioners his widow and only child.

That the original paper-title to said lot of land was lost some time in the year 1846, when the house of the said Bernal was robbed, and his papers stolen or destroyed.

That the petitioners will, on or before the hearing of this their petition by this honorable board, adduce such proofs in support of their claim as they may be advised are necessary.

Wherefore they pray the commissioners, on the final hearing of
4 their petition, and of the evidence they may adduce in its support, to confirm to them the said tract of land.

By their attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office March 1st, 1853.

GEO. FISHER, *Sec'y.*

Deposition of José Castro.

UNITED STATES LAND COMMISSION,
San Francisco, February 9th, 1854.

On this day, before Commissioner Thompson Campbell, came José Castro, a witness in behalf of claimants, Carmen S. Bernal *et al.*, case No. 671, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary:

1 quest. What is your name, age, and place of residence?

Ans. My name is José Castro; I am forty-five years of age; and I reside in Monterey.

2 quest. State what you know in relation to the land claimed by the heirs of José Cornelio Bernal, the grant and occupation of the same.

Ans. In the year 1834, in the last months of the year, the wife of
5 Bernal went to Monterey, and petitioned for a solar or lot, to Governor Figueroa; she requested me to write her petition for the said lot, as recommended by the minister of the mission; which I did, and that a lot of two hundred varas square was granted to her husband.

On the margin of this petition the governor decreed that the grant should be made in conformity with the recommendation of the minister of the mission, and that the same was made in consideration of the services of her husband, rendered as mayordomo of said mission, for the term of fourteen or fifteen years; and the decree contained the further order that the minister of said mission should put the party in possession of the lot so granted.

This decree was signed by the governor, and was delivered to the wife of José Cornelio Bernal. About the middle of the year 1835 I was at the said mission of Dolores, at which time they had on it a wooden house and a foundation for an adobe house. Bernal and his wife were at that time living in the wooden house.

Said solar or lot is situated sixty varas, more or less, from the northwest corner of the establishment of the mission of Dolores, and one hundred and fifty varas, more or less, from the northeast corner of said establish-

6 ment of Dolores, to the northeast corner of said solar, the said solar lying on the south side of an arroyo, which forms the northern boundary of said solar.

Questions by the associate law agent.

1 quest. Do you recollect whether the grant, to which you have referred, was a grant in full property, or whether it was merely provisional?

Ans. The title conveyed by the concession to which I have referred was a title in full property.

JOSÉ CASTRO.

Sworn to and subscribed before me this 9th day of February, A. D. 1854.

THOMPSON CAMPBELL,
Commissioner.

Filed in office February 9th, 1854.

GEO. FISHER, *Secretary.*

Deposition of M. G. Vallejo.

UNITED STATES LAND COMMISSION,
San Francisco, February 9th, 1854.

On this day, before Commissioner Thompson Campbell came M. G. Vallejo, a witness in behalf of claimants, Carmen S. de Bernal *et al.*, case
7 No. 671, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary:

1 question. What is your name, age, and place of residence?

Ans. My name is M. G. Vallejo; I am forty-six years of age; and I reside in the city of Sonoma.

2 quest. State, if you please, what you know in regard to the situation and occupation of a certain solar or lot located in the mission Dolores, and claimed by the heirs of José Cornelio Bernal.

ANS. I know that a grant for a solar in the mission Dolores was made by Governor Figueroa to José Cornelio Bernal, in the year 1834. The solar granted, as above stated, is situated in a northwest direction from the old church of said mission, and close by an arroyo which forms the north boundary of said solar.

The consideration of said grant was a debt due Bernal by the said mission of Dolores, for services which Bernal had rendered in the capacity of mayordomo. In the year 1835 they commenced the foundation of an adobe house, before I went to Sonoma.

8 Associate law agent present.

M. G. VALLEJO.

Sworn to and subscribed before me this 9th day of February, A. D. 1854.

THOMPSON CAMPBELL,
Commissioner.

Filed in office February 9th, 1854.

GEO. FISHER, *Secretary.*

Deposition of J. A. Morenhout.

UNITED STATES LAND COMMISSION,
San Francisco, March 8th, 1854.

On this day, before Commissioner R. Aug. Thompson, came Jacob Antonio Morenhout, a witness in behalf of the claimants, Carmen S. de Bernal *et al.*, case No. 671, who, after being duly sworn, deposed as follows:

Present: Mr. Halleck, att'y for claimant, and J. H. McKune, U. S. law agent.

Witness states his name is Jacob Antonio Morenhout; his age, fifty-six years; and residence, Monterey, California.

Questions by claimants' attorney.

9 Do you know José Cornelio Bernal? State if he is living; and if not, whether he left a widow or children; and if so, what are their names?

Answer. I knew said Bernal. He died in the year 1850; he left a widow named Carmen Sibrian, and one child, a son, named José de Jesus, now aged about twenty-three years; he left no other child. And further deponent saith not.

J. A. MORENHOUT.

Sworn to and subscribed before me March 8th, 1854.

R. AUG. THOMPSON,
Commissioner.

Filed in office March 8th, 1854.

GEO. FISHER, *Secretary.*

No. 671.—*Affidavit.*

In the claim of Carmen S. de Bernal *et al.* to solar in Dolores.

Carmen Sibrian de Bernal, one of the claimants in this case, being duly sworn, deposes and says: That in the year 1834 Governor Figueroa issued to her husband, José Cornelio Bernal, since deceased, a title for a lot

10 of land near the mission building of Dolores, two hundred varas square; that said title continued in her said husband's possession until about the month of December, A. D. 1846, when his house was robbed and his papers were stolen and lost; that she believes said title was then lost or destroyed, as her said husband during his life, and deponent since his death, have neither been able to find it, nor procure any information of it, although diligent search and inquiry has been made.

CARMEN SIBRIAN DE BERNAL.

Sworn to and subscribed before me this 9th day of February, A. D. 1854.

THOMPSON CAMPBELL,
Commissioner.

Filed in office February 9th, 1854.

GEO. FISHER, *Secretary.*

Opinion of the board.

CARMEN S. DE BERNAL & *al.*
vs.
THE UNITED STATES.

For a lot two hundred square, near the mission Dolores, in San Francisco county.

11 The petitioners describe themselves, and are proved to be, the widow and only child of José Cornelio Bernal, who died in the year 1850, and from whom they claim to inherit the land described in the petition.

The original grant is not presented, but the affidavit of Carmen S. Bernal, one of the claimants, shows that it was in her husband's possession until about the month of December, 1846, when his house was robbed and his papers stolen and lost. That both she and her husband made diligent search for it, and never afterwards could find it, and that she believes it was then lost or destroyed.

José Castro swears that in December, 1834, the wife of Bernal went to Monterey and petitioned for the lot; that the grant was recommended by the minister of the *minister of the* mission, in consideration of services rendered by said Bernal to the mission. That the witness, at the request of Bernal's wife, wrote the petition to the governor for the grant; that Governor Figueroa made his decree on the margin of the petition, granting the lot, which was two hundred varas square, to said Bernal, and delivered it, duly signed, to his wife.

12 The minister of the mission was ordered to put Bernal into possession.

M. G. Vallejo also testifies that he knows that a grant for a solar in the mission Dolores was made by Governor Figueroa to said Bernal in the year 1834. Both of these witnesses describe the lot granted as situated in a northwest direction from the mission, and bounded on the north by an arroyo, and one of them describes the lot as located at the distance of sixty varas, more or less, from the northwest corner of the establishment of the mission Dolores, and one hundred and fifty varas from the northeast corner of said establishment of Dolores, to the northeast corner of said solar or lot.

This description, with the arroyo fixed as the northern line of the premises, and the size and shape of the lot (two hundred varas square) given, would seem to enable a surveyor without difficulty to survey the land.

The proof further shows that as early as the middle of the year 1835 Bernal had a house on the lot, and lived there with his family. All the papers connected with the concession, it would seem, went into the hands of the grantee.

Castro testifies that the concession, about which he deposed, was a title in full property of the lot described by him.

13 We think the testimony sufficient to establish the right of the claimants, and a decree will be entered accordingly.

Confirmed.

Filed in office August 8, 1854.

GEO. FISHER, *Secretary.*

Decree of confirmation.

CARMEN S. DE BERNAL *et al.*
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is hereby made is a lot of two hundred varas square, situated in the county of San Francisco, and near the mission Dolores, and the same on which José Cornelio Bernal formerly lived; said lot being situated sixty varas from the northwest corner of the establishment of said mission of Dolores, and one hundred and fifty varas from the northeast corner of said establishment of Dolores to the

14 northeast corner of said lot; the said lot lying on the south side of an arroyo, which forms the northern boundary of said lot, and lying in a square form.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office August 8, 1854.

GEO. FISHER, *Secretary.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings, and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

15 *Secretary's certificate.*

Office of the board of commissioners to ascertain and settle the private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fourteen pages, numbered from 1 to 14, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 671 on the docket of the said board, wherein Carmen S. de Bernal *et al.* are the claimants against the United States, for the place known by the name of "a lot at mission Dolores."

In testimony whereof, I hereunto set my hand and affix my private seal, [SEAL.] (not having a seal of office,) at San Francisco, this thirtieth day of December, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

16 Endorsed: Filed January 9, 1855.

JOHN A. MONROE, *Clerk.*

Appeal notice.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 7th March, 1855.

CARMEN S. DE BERNAL *et al.*
vs.
THE UNITED STATES. } 671.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 10th day of December, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed May 5, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

17 *Petition.*

To the honorable district court of the United States in and for the northern district of California.

THE UNITED STATES, appellants,
vs.
CARMEN S. DE BERNAL *et al.* } No. 165.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of com-

missioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 1st day of May, 1854; that a notice of appeal was filed on the 1st day of May, 1854, and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

S. W. INGE, *U. S. Dist. Att'y.*

18 Endorsed: Filed Nov'r 12, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Answer of appellees.

No. 165.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants,
vs.
CARMEN S. DE BERNAL *et al.*, appellees. } Transcript No. 671.

Answer of appellees.

Carmen Sibrian de Bernal, widow, and José Jesus Bernal, only child of José Cornelio Bernal, deceased, the appellees in the above-entitled cause, appear by their att'ys, and for answer to the petition of the United States, filed herein, say:

That their title to a lot of land, two hundred varas square, near the former mission of San Francisco de Asis or Dolores, as set forth and described
19 in their petition to the board of commissioners, and in the documentary and other evidence filed in this cause, is a good and valid title. The land claimed is situate in the northern district of California, and within the jurisdiction of this court.

Wherefore they pray this honorable court to affirm the decision of the board of commissioners, and to decree their title to be valid.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellees.

Endorsed: Filed Nov. 12, 1855.

JOHN A MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Opinion.

United States district court, northern district of California.

THE UNITED STATES
vs.
CARMEN S. DE BERNAL *et al.*

The claim in this case is for a solar in the mission of Dolores. It appears to have been granted by Governor Figueroa, on the recommendation
20 of the priest of the mission, and in consideration of services rendered to the mission by the claimant as mayordomo.

No argument was had in the case at the hearing, nor did the district attorney suggest any objection to the validity of the grant.

The claim was confirmed by the board, and we think their decision, in the absence of any showing to the contrary on the part of the government, ought to be affirmed.

Decree.—No. 165.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants, *vs.* C. S. DE BERNAL *et al.*, appellees. } Lot in Dolores.—Transcript from board of com'rs, No. 671.

Stated term, March 24th, 1856.

On appeal from the final decision of the board of commissioners to
21 ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things affirmed. And it is likewise further ordered, adjudged, and decreed, that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of two hundred varas square, being the same land proved to have been granted to José Cornelio Bernal, and of which the possession was proved to have been long enjoyed by the said José Cornelio
Bernal, in his lifetime, and by the claimants, his widow and only
22 child, since his death; provided that the said quantity of two hundred varas square, now confirmed to the claimants, be contained within the boundaries of the land so proved to have been granted; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity.

OGDEN HOFFMAN, JR.,
U. S. Dist. Judge.

Endorsed: Filed March 24, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Affidavits of T. M. Dehon.

District court United States, northern district, State of California.

UNITED STATES *vs.* CARMEN C. DE BERNAL *et als.* }

The undersigned being duly sworn, deposes and says, that on the 31st March last he caused to be presented before this honorable court a motion to have the above-entitled cause opened for reconsideration, for the reason
that he had been entirely taken by surprise, on finding that the same
23 had been submitted to this court without his knowledge, although he had previously prepared a brief showing that the defendants had no rights whatever in the premises, which he is settled upon as U. S. land. He

had been constantly on the watch to ascertain when the same should come up for consideration, but during the interval of a severe sickness on his part, when he was unable to attend to business, the said cause seems to have been before this court, of which he was consequently unaware.

In addition to several strong legal points, which he is advised by his attorney should and ought to overthrow all pretensions of the defendants in this cause to the premises referred to, he will also introduce as witnesses one Charles Brown and one E. Valencia, and will also offer his own testimony to prove that the claims of said Carmen S. de Bernal are founded in error, and will also prove that the asseverations contained in her petition for said land are false in fact. The undersigned also states that he has been occupying said ground or a portion thereof personally since the month of January, 1850, that he bought said land of one A. T. Moses, who has
24 testified under oath that he occupied the same since 1846 or 1847, and that he has been informed by said Moses that the said family of Bernals never lived on said land nor never had any claim thereto.

He believes, therefore, to prevent a fraud on the government of the United States, that said cause should be opened for a rehearing, and presents this in addition to his former petition, that this hon. court will cause to be reconsidered this cause, at an early day, that the testimony and proofs referred to may be offered, and the ends of justice thereby be promoted.

T. M. J. DEHON.

STATE OF CALIFORNIA,
County of San Francisco, ss:

[SEAL.] Subscribed and sworn before me this 7th day of April, A. D. 1856.
GILBERT A. GRANT, *Notary Public.*

U. S. district court, northern district.

UNITED STATES
vs.
CARMEN S. DE BERNAL *et als.*

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

25 Thomas M. J. Dehon, a resident of said city, being duly sworn, deposes and says: That the said Carmen S. de Bernal and *als.* have heretofore filed their claim for 200 varas square of land in the mission Dolores, city of San Francisco, before the board of U. S. land commission; which said claim was confirmed to said Bernal and *als.*, as appears by the records of said land commission.

That the United States appealed from the decision of said land commission to this court; that said cause is numbered in the docket of this court as 165.

That this deponent lately learned that the decision of said board of land commissioners was confirmed by this honorable court about one week since.

This deponent further saith that he is in the occupation and claims to be the owner of a tract of land in the mission of Dolores, a portion of which is claimed by virtue of said decisions in this cause, to include a portion of this deponent's said land.

Deponent further saith that since the decision of said board of land commissioners he has made diligent search and inquiry into the title of
26 said Bernal, and has formed the opinion that the confirmation of same might and ought to be opposed successfully before this hon. court; and that he ever intended to oppose said confirmation; but that he was utterly surprised when he heard the decision (which was on the day of its rendition) had been made.

That he had made frequent examinations of the records with a view to bring forward testimony to defeat said claim when it should come up for consideration; but that at the very time when said case, it seems, was actually before this court, he was overrun by a great press of business, and had been confined to his house by severe sickness, some two weeks, so as to render him unable to give the attention thereto he had intended.

He therefore prays this hon. court to set aside the judgment herein, and for a rehearing upon the merits of said cause.

[SEAL.] T. M. J. DEHON.

Subscribed and sworn before me this 31st day of March, A. D. 1856.
GILBERT A. GRANT, *Notary Public.*

Endorsed: Filed April 7, 1856.
JOHN A. MONROE, *Clerk,*
27 By W. H. CHEVERS, *Deputy.*

No. 165.

In the United States district court for the northern district of California.

THE UNITED STATES, appellants,
vs.
C. S. BERNAL *et al.*, appellees. } 200 varas square in Dolores.

On the motion of U. S. dist. att'y to reopen the case for new testimony for U. S.

Affidavit of H. W. Halleck.

Henry W. Halleck, on oath, deposes and says: That he is one of the counsel for appellees in the above-entitled cause; that this claim was presented to the board of commissioners to ascertain and settle private land claims in Cala., on or about the 1st day of March, 1853; that it was confirmed by said board on the 8th day of August, 1854; that the transcript was filed in the office of the clerk of this court on the 9th day of January, 1855; that the counsel of the respective parties were heard and the
28 case submitted to this court on the 28th day of February, 1856; that the said claim was decided by this court and a decree of confirmation entered on the 24th day of March, 1856.

H. W. HALLECK.

Sworn to and subscribed before me April 7, 1856.
W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed April 7, 1856.
JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Order denying motion to set aside decree.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Monday, the seventh day of April, in the year of our Lord one thousand eight hundred and fifty-six.

Present: The Hon. Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
CARMEN S. DE BERNAL *et al.* } No. 165.

On hearing the motion made by the U. S. dist. att'y that the de-
29 cree of confirmation heretofore entered in this case be set aside, and that the cause be opened and further evidence be allowed to be taken, and, on reading and filing the affidavits of T. M. Dehon in support of, and that of H. W. Halleck against said motion, ordered by the court that said motion be denied.

Endorsed: Filed April 7th, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Notice from Att'y Gen'l.

CALIFORNIA LAND CLAIMS,
Attorney General's Office, 19 *Feb.*, 1857.

SIR: In the case of the claim of Carmen S. de Bernal, confirmed to the claimant by the commissioners, case No. six hundred and seventy-one, (671,) will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

WM. BLANDING, Esq., *U. S. Attorney, San Francisco.*

30 In the dist. court of the U. S. for the northern dist. of Cal'a.

Stipulation.

THE UNITED STATES
v.
C. S. DE BERNAL. } D. C. 165. L. C. 671.

SAN FRANCISCO, *April 2nd*, 1857.

In pursuance of a notice from the U. S. Attorney Gen'l, hereunto annexed, it is hereby stipulated and agreed that no further appeal be taken in this case on the part of the United States, and that claimant have leave to proceed under the decree of this court, heretofore rendered in his favor, as under final decree.

WM. BLANDING, *Dist. Att'y.*

HALLECK, PEACHY & BILLINGS,
Att'ys for Claimants.

Endorsed: Filed April 2nd, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

31 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the second day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

Order vacating appeal.

THE UNITED STATES
v.
C. S. DE BERNAL. } D. C. 165. L. C. 671.

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the United States attorney—

On motion of the district attorney it is ordered, adjudged, and decreed, that claimant have leave to proceed under the decree of this court, heretofore rendered in his favor, as under final decree.

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed April 2d, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Petition for return of survey.

32 In the district court of the United States for the northern district of California.

UNITED STATES
vs.
CARMEN S. DE BERNAL *et al.* } No. 165.

To the Hon. Ogden Hoffman, judge of the district court of the United States for the northern district of California:

Your petitioner, Theodore Dehon, respectfully represents, by his attorneys, Crockett and Crittenden, that he is a resident and citizen of the State of New York, and has never been in the State of California, but is the owner of a tract of land situate at the mission Dolores, in the city and county of San Francisco, in the State of California, the title to which your petitioner derives, in part, from Joseph S. Allemany, the archbishop of the Roman Catholic Church for the diocese of California, to whom the said lands so conveyed have been duly patented by the government of the United States.

Your petitioner further represents that in the above-entitled cause of the United States *vs.* Carmen S. de Bernal *et al.*, which is numbered 165
33 on the register of land causes in said court, there was fully confirmed to said claimants by a decree of said court, a tract of land two hundred varas square at the said mission Dolores, and that by virtue of said decree of confirmation the United States surveyor general for California has caused a survey to be made of the lands so confirmed, which survey was, on the 16th day of April, 1861, approved by said surveyor general and his approval endorsed on the plat of said survey, and the fact of said survey having been so made and approved, was first duly published by said surveyor general on the 4th day of July, 1861, under and in pursuance of the act of Congress in that behalf, approved June 14th, 1860, as appears by a copy of said notice, hereto annexed:

U. S. land surveys.

To all whom it may concern:

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, June 25, 1861.

In compliance with the first section of an act of Congress, approved June 14, 1860, regulating surveys of private land claims, notice is hereby given

that the plats of the following private land claims, surveyed in pursuance of the thirteenth section of an act entitled *an act entitled* "An act
34 to ascertain and settle private land claims in the State of California," approved March 31, 1851, have been examined and approved by J. W. Mandeville, esq., late surveyor general.

Name of rancho.	Confirmee.
Lot near mission Dolores.	C. S. de Bernal *et al.*
Lot near mission Dolores.	Heirs of F. G. Palomanes.

The plats will be retained in this office, subject to inspection, for four weeks from the date of this publication.

EDWARD F. BEALE,
U. S. Surveyor General.

Your petitioner further represents that the said survey is erroneous, and does not conform either to the original grant or the said decree of confirmation, and embraces other and different land from that which was so granted and confirmed, and wrongfully includes a considerable portion of the land so patented to said Allemany, and held by your petitioner under a title derived from said Allemany by regular mesne conveyances down to your petitioner.

Wherefore, he prays that an order be made requiring the said surveyor general to return the said survey into your honorable court, that the
35 same may be reviewed and reformed or set aside.

CROCKETT & CRITTENDEN,
Att'ys for Theodore Dehon.

STATE OF CALIFORNIA, *City and County of San Francisco :*

Michael Lynch, being duly sworn, deposes that he is the agent and attorney in fact of the above-named Theodore Dehon, who resides in the city of New York, and is absent from this State, and that said Lynch has charge of the business and affairs of said Dehon in California, and that the foregoing petition is true, of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters he believes it to be true.

MICHAEL LYNCH.

Subscribed and sworn to before me this 9th day of July, A. D. 1861.
[SEAL.] F. J. THIBAULT, *Notary Public.*

Endorsed: Filed July 13, 1861.

W. H. CHEVERS, *Clerk.*

36 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Saturday, the 13th day of July, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

Order to return survey.

THE UNITED STATES } Inland cases.—District court No. 165. Land com. No.
v. 671.
C. S. DE BERNAL *et al.* }

And now at this day, on application of Crockett & Crittenden, attorneys for Theodore Dehon, it is ordered that the surveyor general of the United States for California return into this court, on or before Wednesday, the 7th

day of August, A. D. 1861, his official survey and plat of the land finally confirmed in the above-entitled cause, known as "a lot at the mission Dolores," and situated in the county of San Francisco, in said district. And it is further ordered that the United States marshal for this district
37 serve upon the said surveyor general, without delay, a certified copy of this order, and make due return hereon.

Endorsed: Served this day by delivering a copy to the chief clerk in surveyor general's office.

WM. RABÉ, *U. S. Marshal*,
By DAVID R. McKEE, *Deputy*.

SAN FRANCISCO, *July 13th*, 1861.

Returnable 7th August, 1861. Issued July 13, 1861. Filed August 7, 1861.

W. H. CHEVERS, *Clerk*.

Monition.

UNITED STATES OF AMERICA, *Northern district of California, ss:*

The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed in case No. 165, to C. S. de Bernal *et al.*, known as "a lot at the mission of Dolores," and situated in the county of San Francisco, in said district:

38 Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having or claiming to have an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday the 7th day of August, A. D. 1861, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken; and what you shall have done under this writ do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 13th day of July, A. D. 1861.

[SEAL.] W. H. CHEVERS, *Clerk*.

Endorsed: The within monition was received by me on Saturday, the 13 day of July, 1861, and in obedience thereto I have given due notice as therein commanded, by causing the publication of said notice for 4 consecu-
39 tive Wednesdays in the Daily Mirror, commencing on the 17 day of July, 1861, a paper published in San Francisco. Dated San Francisco, Aug. 7, 1861.

WM. RABÉ, *U. S. Marshal*.

Filed 7th Aug., 1861.

W. H. CHEVERS, *Clerk*.

Order on return of monition.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San

Francisco, on Wednesday, the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* C. S. DE BERNAL *et al.* } In land cases.—District court No. 165. Land com. No. 671.

And now at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded, on motion of Mr. Crockett, attorney for T. De-
40 hon, proclamation was made that all parties having or claiming to have an interest in the survey and location of the land finally confirmed in the above-entitled cause appear and intervene for the protection of such interest; the U. S. attorney appeared in behalf of the U. S., and Messrs. Crockett and Crittenden appeared in behalf of the intervenor, Theodore Dehon. No other party appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed Aug. 7, 1861.

W. H. CHEVERS, *Clerk.*

Exceptions to survey.

In the district court of the United States for the northern district of California.

UNITED STATES *vs.* CARMEN S. DE BERNAL *et al.* } No. 165.

William Dehon, the executor of the last will and testament of Theo-
41 dore Dehon, deceased, now comes, and for and on behalf of the estate of said Theodore Dehon, says that the official approved survey in the above-entitled cause is erroneous and ought to be set aside and reformed, and for cause of exception to said survey he alleges as follows, to wit:

1st. That said survey does not conform either to the original grant or final decree of confirmation in said cause in any respect.

2nd. That said survey embraces other and different land than that which was confirmed to the claimants, and does not embrace any part of that which was confirmed to them, but has been located upon lands no part of which was either granted or confirmed to the claimants, and which in fact belong to the estate of the said Theodore Dehon; a portion of which have been finally confirmed and patented to Joseph S. Allemany, the archbishop of the Roman Catholic church for the diocese of California, under conveyances from whom the said Theodore Dehon, in his lifetime and at the time of his death, was in possession of the lands embraced in the said official survey.

Wherefore he prays, on behalf of the said estate, that the said survey be annulled and set aside, and be adjudged to be erroneous.

CROCKETT & CRITTENDEN,

42 *Att'ys for the intervenor and for the estate of Theodore Dehon.*

Endorsed: Filed Sept. 5, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows plate or map, page 42.)

43 In the district court of the United States for the northern district of California.

Deposition of Franc'o Sanchez.

THE UNITED STATES vs. CARMEN S. DE BERNAL. } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 4th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bails and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Francisco Sanchez, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being interpreted by A. D. Splivalo, a sworn interpreter:

44 Present: J. B. Crockett, for intervenor, Dehon; A. C. Peachy, for claimant; and W. H. Sharp, U. S. attorney, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Francisco Sanchez; I am 57 years of age, and I reside in San Mateo county.

2. Were you acquainted with José Cornelio Bernal in his lifetime? If so, when did you first know him?

Ans. I was. I knew him ever since I was a young man, and he was a soldier at the presidio. This was before the year 1824.

3. Where did the said Bernal reside in the year 1834, and prior to that time?

Ans. After he left being a soldier, he went to the rancho of the Higueras, where he remained about two years; after this he came to the
45 mission Dolores, where he was mayordomo, and resided there.

4. In what years was he mayordomo of the mission?

Ans. I do not remember.

5. Was it before or after 1834?

Ans. It was before 1834, because after that period he left the mission.

6. Where did he reside at the mission whilst he was mayordomo?

Ans. At the corner of Dolores and Centre streets, where are situated some adobe houses, called "houses of the mayordomos," east of the mission buildings.

7. Where did Bernal next reside after leaving the house of the mayordomo?

Ans. He went to found a ranch in the neighborhood of the mission, on some land granted to him by the government, and there built an adobe house, wherein he lived. He lived on the ranch until the time of his
46 death. *He lived on the ranch until the time of his death.* He died in a wooden house which he had built near the adobe one.

8. What office, if any, did you hold at the mission, and in what years?

Ans I had no office of the mission, but I had the government office of comandante militaire during the years 1838, 1839, and 1840.

9. State whether or not you were frequently at the mission and familiar with the houses and improvements there subsequent to the year 1834?

Ans. I was; and I was familiar with the houses and improvements.

10. Do you know whether or not the said Bernal erected any building at the mission after the year 1834? If so, describe the location of any such building.

Ans. He was building a house to the west of the houses of the escolta, (guard,) but I did not see it finished. I saw it merely when it was
47 as high as the eaves.

11. Do you know whether or not the said house was ever finished, or whether it fell down before being finished?

Ans. It fell down before it was finished. I never saw the roof put on it.

12. Was the said house erected before or after 1834?

Ans. Before.

13. Do you know where Chas. Brown now resides at the mission; and do you know an old abobe house north of Brown's house?

Ans. I do.

14. In 1834 how was the ground occupied on which Brown's house and the old adobe house now stand?

Ans. It was vacant. The houses of the escolta (guard) which occupied said ground were all in ruins, and there was nobody there.

48 15. How far did the houses of the escolta extend towards the north, and how were they bounded on the south?

Ans. On the north the said houses went up to the acequia, and on the south they were bounded by the mill and soap factory of the mission.

16. Was there any wall or other enclosure which included the mill and soap factory, and connected them with the principal mission building?

Ans. There was a wall, and the mill and soap factory themselves formed part of the wall on the north, west, and east; the southern portion was formed by the mission buildings.

17. Do you know where Francisco Ruffino now resides? If so, how was the ground which he now occupies used in 1834, and prior to that time?

(Objected to as irrelevant.)

Ans. I do. In 1834 whatever buildings had existed on the premises
49 were in ruins, and the place was unoccupied. Previous to 1834 the mission had occupied said ground with a mill and soap factory, and had used it for that purpose.

18. On which side of the acequia was the house which Bernal commenced to build and fell down; and how near was it to the acequia?

Ans. It was on the south side of the acequia, about thirty varas, more or less, distant from it.

19. How far was the said house from the north end of the houses of the escolta?

Ans. The distance was pretty long. I cannot say how long. I think over one hundred varas.

20. Do you know the acequia to the north of said building of Bernal? If so, do you know when the said acequia was made there?

Ans. I do. It was made before I was born. I do not know when.

50 21. From whence does the water come which supplied the said acequia?

(Objected to as irrelevant.)

Ans. From the top of a hill where there is now a college.

22. Do you know whether there was in 1834, and prior thereto, and is now, an arroyo, a short distance to the north of the acequia, running nearly parallel with it?

Ans. I do. There is an arroyo, and it runs through the cañada. It is about fifty or sixty varas distant from the acequia.

23. State whether or not the waters of the acequia are supplied from the said arroyo.

Ans. No; they are not. The arroyo has its source from the marsh called las manzanitas. The acequia came from a spring near the college.

24. In 1834 and 1835, and prior thereto, from the time you first
51 knew the mission, by what name was the acequia, and by what name was the arroyo, called or known at the mission?

Ans. The arroyo had no name whatever. It was called the "arroyo." The acequia was always spoken of as the acequia of the mission.

25. Was the said arroyo a permanent running stream, or was it dry in the summer?

(Objected to as irrelevant.)

Ans. I have never seen it dry; it was always running.

26. From 1834 to 1840, how was the land used and occupied which lies between the principal buildings of the mission and the foot-hills on the west and northwest of the mission buildings?

(Objected to as irrelevant.)

Ans. It was unoccupied.

27. Was it enclosed in any way?

Ans. It was not.

52 28. What lands, if any, were known as the patrero of the mission from 1834 to 1840?

Ans. The lands about where the mission embarcadero now is.

(The last question and answer objected to as irrelevant.)

29. Do you know whether or not there is or ever was any other arroyo than the one you have described near to the house which Bernal commenced to build?

Ans. There never was.

30. Which runs upon the highest grounds, the arroyo or the acequia?

Ans. The acequia. The arroyo runs below in the cañada.

31. What was the difference between the arroyo and an acequia, as understood by native Californians, from 1834, 1840, and from thence up to this time?

53 Ans. An arroyo is a natural stream, and an acequia is made on purpose to have water brought along, as in an aqueduct.

(Counsel for claimant objects, and did object at the time, to every question and answer as irrelevant.)

Cross-examination waived.

Deposition closed.

FRANC'O SANCHEZ.

Subscribed and sworn to this 4th day of August, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28, 1862.

W. H. CHEVERS, *Clerk.*

54 In the district court of the United States for the northern district of California.

Deposition of Josefa de Haro Denniston.

THE UNITED STATES } In land cases.—Dist. court No. 165. Land com. N
v. } 671.
CARMEN S. DE BERNAL. }

Be it remembered that on this 5th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner, duly appointed by the circuit court of the United States for the

district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Josefa de Haro Denniston, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Spilvalo, a sworn interpreter:

55 Present: J. B. Crockett, for intervenor, Dehon; A. C. Peachy, for claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Josefa de Haro Denniston; my age is 37 years; and I reside at the mission Dolores.

2. How how long have you resided at the mission Dolores?

Ans. I lived there ever since 1841. I also lived there some time prior to this.

3. Where did you reside between the years 1834 and 1841?

Ans. At the Presidio, and at the mission Dolores.

4. Were you often at the mission and well acquainted with the people and localities there, between the years 1834 and 1841?

56 Ans. I was, and was well acquainted with the people and localities.

5. Did you know José Cornelio Bernal in his lifetime, and particularly between the years 1834 and 1840?

Ans. I was.

6. Where did the said Bernal reside in 1834?

Ans. I think that about that time he lived in the mission, in an adobe house, which now forms the corner of Dolores and Centre streets. That was the house I knew as the house of the mayordomo.

7. When he left that house where did he remove to?

(Objected to as irrelevant.)

Ans. To his ranch, where he continued to reside until his death.

8. Do you know whether or not the said Bernal, in his lifetime,

57 erected, or commenced to erect, any house at the mission Dolores?

(Objected to as irrelevant.)

Ans. I do not know. In the rear of the mission I saw some adobe walls, but who raised them I do not know, for I was then too young.

9. Do you know the said Bernal's having enclosed, cultivated, or used as his own, any lot or land to the west or northwest of the mission buildings, or to the west or northwest of the premises now occupied by Charles Brown?

(Objected to as irrelevant.)

Ans. I do not know that he did, nor do I recollect ever having seen any lot on the place enclosed, cultivated, or used by said Bernal.

10. Did or not your father, Francisco de Haro, claim and occupy a lot one hundred varas square, fronting on Dolores street to the north of the mission buildings? If so, in what year did he go to reside upon the said lot?

58 (Objected to as irrelevant.)

Ans. He did; he went to live there in 1843.

11. Did you reside with your father on that lot in 1843? If so, how long after?

(Objected to as irrelevant and leading.)

Ans. I never lived on said lot. I went to live with my husband, on the opposite side of Dolores street, when I married him in 1841, and I have resided there ever since.

12. Who first occupied the ground in the rear of your father's one-hundred-vara lot?

(Objected to as irrelevant.)

Ans. It was occupied by Mr. Dehon, I think, in the year 1849.

13. State whether or not the said ground was occupied by any one, to your knowledge, prior to Dehon's occupancy.

59 (Objected to as irrelevant.)

Ans. I do not know of any one's occupying said land before Dehon.

Cross-examination waived. Deposition closed.

JOSEFA DE H'O DENNISTON.

Subscribed and sworn to this 5th day of August, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

It is admitted by counsel for claimant that Mrs. Chas. Brown, sister of the last witness, would testify to the same facts as the witness, he waiving the production of the witness, and reserving the same objection as to this last.

Endorsed: Filed August 28th, 1862.

W. H. CHEVERS, *Clerk.*

60 *Deposition of Wm. P. Humphreys.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* CARMEN S. DE BERNAL. } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered, that on this 5th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Wm. P. Humphreys, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: J. B. Crockett, for intervenor, Dehon; A. C. Peachy, for
61 claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, place of residence, and occupation?

Ans. My name is Wm. P. Humphreys; I am about 32 years of age; I reside in San Francisco; and my occupation is that of a surveyor.

2. State whether or not you are familiar with the lands and localities of the mission Dolores. If so, state how long have you known them.

Ans. I am, and have known them since 1849.

3. Examine the map now shown you, marked Exhibit Humphreys No. 1, to be annexed to your deposition. State what it is, and by whom it was made.

Ans. It is a survey of the "Bernal 200-vara lot," the location of
62 the same shown by the official survey in this case, and the position of the ditches and streams north of the said lot; also the position of the church buildings. The survey and map were made by myself.

4. State whether or not the said map correctly represents the official survey in this case, and how it is designated on the said map.

Ans. It does represent the official survey correctly. It is designated as "Bernal's lot."

5. State whether or not said map correctly represents the location of the mission buildings as they now are, and whether their location was ascertained by actual survey.

Ans. It does, and the position of said buildings was determined by actual survey.

6. How was the location of the ditch indicated on said map as "Survey No. 1," ascertained?

Ans. By actual survey in October, 1861, at which time the map,
63 and survey represented thereon, were made.

7. Do you know whether or not the said ditch is an ancient ditch, or one but lately made?

Ans. It appears to be an old ditch.

8. State whether or not water runs through it, and whether it is the natural channel of the water.

Ans. Water does run through it. It is an artificial ditch.

9. State whether or not there is an arroyo to the north of said ditch. If so, how did you ascertain its location?

Ans. There is a spring to the northward and westward of said ditch, indicated as "Station 1 of survey (in red ink) 2." The only evidence of a natural stream is at "Station 1, survey 2;" thence running south 49° east, one chain 30 links, to the entrance of a ditch; thence along the ditch to the point marked "Windmill" on the map; at that point there is a tank,
64 which receives the water from the ditch, indicated by the "Survey 2." The water running through the ditch, indicated by "Survey 1," is supplied from this reservoir. "Survey 3" indicates a ditch conveying water from the reservoir at the "Windmill," to an artificial pond, as indicated on the map.

"Survey 4" indicates the ditch commencing at station No. 5, of survey 3; running thence to station 3 of survey 4; at which point the water is led under ground, by a wooden trough, to station 4, of survey 4, where the water reappears on the surface, and is conducted by the ditch to Station No. 6, as shown on the map, and below it to lands claimed by Terloo, where it spreads, becomes a natural stream, and runs into Mission creek.

10. Over what kind of ground do the ditches run, as indicated by surveys 3 and 4?

Ans. It is low ground, in comparison with survey 1, which runs around the crest of higher ground. The ditches indicated by surveys 2, 3,
65 and 4, from appearances, I should judge to be of recent origin.

11. State whether or not you have recently examined a patent issued by the government of the U. S. to Joseph S. Alemany, the archbishop of the Catholic Church of the diocese of California, for the church property at the mission Dolores. If so, state whether or not the lands included within the said patent, and the official survey on which the same was founded, embrace any portion of the lands included in the official survey in this cause. If so, describe the interference on your said map, Exhibit Humphreys No. 1.

(Objected to as incompetent and irrelevant.)

Ans. I have examined said patent and survey, and find by actual survey that it does interfere with the Bernal lot, as shown by the official survey in

this case. The interference is shown on Exhibit Humphreys No. *1*,
66 by lines in pencil indicated at the corners by the letters "A, B, C, and D." Its approximate area is a little over one-fifth of an acre.

12. If the said lot of Bernal be required by the decree of confirmation to be so located as that it shall have an arroyo or natural stream for its northern boundary, state whether or not the official survey conforms to the decree in this respect; if not, how should it be so located, in your opinion as a surveyor?

(Objected to because it states a purely hypothetical case. The decree of confirmation does not make the northern boundary of said tract an arroyo.)

Ans. It would not conform to the decree. On a thorough examination of the ground the location should be made in accordance with the decree.

(Here follows map, page 66.)

67 *Cross-examination.—Questions by counsel for claimant.*

Ques. 13. Will you describe on your map the boundaries of the cemetery near the mission church building as they existed in 1849?

Ans. The westerly pencil line indicates, as nearly as I can recollect, portions of the westerly boundary of the cemetery at that time. I mean the line indicated by the letters "E D" of the U. S. patent before referred to.

Deposition closed.

W. P. HUMPHREYS.

Sworn to and subscribed August 5, 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28, 1862.

W. H. CHEVERS, *Clerk.*

68 *Deposition of Cand'lo Valencia.*

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. C. S. DE BERNAL. } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 11th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, W. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Candelario Valencia, a witness produced in behalf of the intervenor Dehon in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter:

69 Present: J. B. Crockett, for intervenor, Dehon; A. C. Peachy, for claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Candelario Valencia; my age is fifty-four years; and I reside at the mission of Dolores.

2. Where did you first know the mission Dolores, and how long have you resided there?

Ans. I first knew it when I was ten or twelve years old. I have resided there twenty-three years, and up to this time.

3. Did you know José Cornelio Bernal in his lifetime? If so, when did you first know him?

Ans. I did. I first knew him when I was fifteen or sixteen years of age.

70 4. Where did said Bernal reside when you first knew him, and where afterwards?

Ans. When I first knew him he resided at the Presidio, where he was a soldier; he next resided at the ranch of thei Higueras, near the mission of San José; after this he went to reside at the mission Dolores, in the house of the mayordomo, which is situate at what is now the corner of Center and Dolores streets, and in front of the mission buildings. After this he resided at his rancho La Precita, where he resided until the time of his death.

5. Do you know whether or nor he ever built a house or improved a lot at the mission Dolores?

Ans. I never knew of his having built a house, or made any improvements at the mission.

6. Do you know where the house of the escolta of the mission was?

Ans. I do. It was situated where the house of Chas. Brown now is.

71 7. How was the ground occupied in former times, between the houses of the escolta and the principal mission buildings?

Ans. It was a callejon, and was occupied by a mill and other houses.

8. How was the ground occupied in the rear of Brown's house, before the Americans came?

Ans. It was occupied by de Haro as a sowing ground.

9. Is there or not an old adobe house near to and north of Brown's house; and if so, who built this adobe house and first occupied it?

Ans. There is. It was built and first occupied by de Haro.

10. Who, if any one, occupied the ground to the rear of de Haro's ground, and between it and the foot hills?

Ans. No one occupied it.

72 11. Was there or not, when you first knew the mission, an acequia near to and north of the houses of the escolta?

Ans. There was.

12. Was there or not an arroyo near to and to the north of the acequia?

Ans. There was.

13. State whether or not the said Bernal or his family at any time during his lifetime occupied, improved, or cultivated any lot at the mission Dolores, except the lot on which the house of the mayordomo was situated.

Ans. He did not, nor any of his family.

(Counsel for claimant objects to the foregoing testimony as irrelevant.)

Cross-examination waived.

Deposition closed.

his
CANDELARIO × VALENCIA.
mark.

Sworn to and subscribed August 11, 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28, 1862.

W. H. CHEVERS, *Clerk.*

73 *Deposition of Maria B. Valencia.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
C. S. DE BERNAL. } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 11th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Maria Bernada Valencia, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter:

74 Present: J. B. Crockett, esq., for intervenor, Dehon; A. C. Peachy, esq., for claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Maria Bernada Valencia; my age is 47 years; and I reside in the city of San Francisco.

2. Are you acquainted with the localities of the mission Dolores? If so, how long have you known that place?

Ans. I am; I have known it ever since I can remember.

3. Were you acquainted with José Cornelio Bernal in his lifetime? If so, when did you first know him?

Ans. I was; I knew him ever since I can remember.

4. Where did he reside when you first knew him?

75 Ans. I can remember that he first resided at the Presidio, but afterwards, when he got married, he resided at the mission Dolores, where he was mayordomo in 1829. He resided in some adobe houses in the corner in front of the church, which were known as the mayordomo's houses.

5. Where did he next reside after leaving the mayordomo's houses?

Ans. On his ranch, near the mission called La Precita, where he resided until his death.

6. Do you know whether or not he built a house at any time, or improved a lot at the mission Dolores?

Ans. I do not know of his ever having built a house or made any improvements at the mission.

7. Where did you reside from 1830 to 1840?

Ans. I resided two years at the Presidio, and the rest of the time in Contra Costa.

76 8. State whether or not you were frequently at the mission Dolores during that time.

Ans. Yes, I was.

9. Do you know the adobe house in which Francisco de Haro formerly resided, to the north of the house now occupied by Chas. Brown?

Ans. I do.

10. Who occupied the ground to the rear of the lot on which De Haro lived?

Ans. No one that I know of.

11. Do you know whether or not there was an acequia, in 1834, near to de Haro's house, and a little to the north of it?

Ans. I have always known of that acequia being there.

12. In 1834 was it an old acequia, or had it then been recently
77 made?

Ans. It was an old acequia.

13. Was there or not at that time an arroyo to the north of the acequia?

Ans. There was.

(Counsel for claimant objects to the foregoing testimony as irrelevant.)

Cross-examination waived. Deposition closed.

her
MARIA BERNADA × VALENCIA.
mark.

Subscribed and sworn to this 11th day of August, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28th, 1862.

W. H. CHEVERS, *Clerk.*

78 *Deposition of J. de la C. Sanchez.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* C. S. DE BERNAL. } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 11th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared José de la Cruz Sanchez, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter.

Present: J. B. Crockett, for intervenor, Dehon; A. C. Peachy, for
79 claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, and place of residence?

Ans. My name is José de la Cruz Sanchez; my age is 63 years; and I reside in San Mateo county.

2. Do you know the mission Dolores? If so, how long have you known it?

Ans. I do. I have known it ever since the year 1823 or 1824; I also knew it before this, when I was a boy.

3. Did you ever hold any office? If so, what?

Ans. I did. I was administrator of the mission in 1838 or 1839.

4. Were you or not well acquainted at the mission in the year 1830, and up to the present time?

Ans. I was, and am.

80 5. Do you know where Chas. Brown now resides at the mission, and do you know the old adobe house near to and to the north of Brown's house?

Ans. I do.

6. How was the ground where these houses stand occupied when you first knew the mission?

Ans. It was occupied by the houses of the escolta.

7. Who built and first occupied this adobe house?

Ans. De Haro.

8. How was the ground formerly occupied, between the houses of the escolta and the principal mission buildings?

Ans. By a mill, soap factory, and other buildings, which were used by the padres of the mission.

81 9. From the year 1834, up to the time the Americans came, who occupied or cultivated the land to the rear of de Haro's lot, between that and the foot-hills?

Ans. No one.

10. Did you know José Cornelio Bernal in his lifetime? If so, when did you first know him?

Ans. I did; when I first knew him I was quite a boy.

11. Where did he reside in 1834?

Ans. In the houses of the mayordomo, at the mission, situate at the corner in front of the church.

12. Where did he next reside?

Ans. On his rancho La Precita, where he resided until the time of his death.

13. Do you know whether or not he ever occupied, cultivated, or improved any lot at the mission, except that upon which the house of the mayordomo stood?

Ans. He never did.

82 14. Did you know José Figueroa, the governor of California, in the years 1834 and 1835?

Ans. I did not.

15. In 1834 or 1835, what lots, if any, at the mission were claimed or occupied by private individuals as their own property?

Ans. The one of Felipe Gomez, Candelario Valencia, Leandro Galindo, Jesus Noe, de Haro. I gave these lots myself while I was administrador, by order of the government, but I do not remember the date when this happened.

16. State whether or not, during the lifetime of said Bernal, you ever knew or heard of a lot having been granted to him, or that he claimed a lot to the rear of de Haro's lot.

Ans. I do not know of any such, and never heard of his having claimed any such lot.

83 17. State whether or not there was an acequia near to and north of the houses of the escolta when you first knew the mission.

Ans. There was.

18. Was there or not, at that time, an arroyo near to and north of the acequia?

Ans. There was.

(Counsel for claimant objects to the foregoing testimony as irrelevant.)

Cross-examination waived. Deposition closed.

J'É DE LA C. SANCHEZ.

Subscribed and sworn to, this 11th day of August, A. D. 1862, before me.
W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28th, 1862.
W. H. CHEVERS, *Clerk.*

84 *Deposition of Chas. Brown.*

In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases.—Dist. court No. 165.—Land com. No. 671.
v.
C. S. DE BERNAL. }

Be it remembered, that on this 12th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner, duly appointed by the circuit court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Charles Brown, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: J. B. Crockett, esq., for intervenor, Dehon; A. C. Peachy,
85 esq., for claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Chas. Brown; my age is 48 years; and I reside at the mission Dolores.

2. When did you first become acquainted with the mission Dolores?

Ans. About 1832.

3. Where did you reside from that time until 1840?

Ans. Most all of that time across the bay, in San Antonio I came back to the mission in 1838, and have lived there and in that vicinity ever since.

4. Were you or not frequently at said mission between the years 1832 and 1838?

Ans. I was.

86 5. State whether or not in the year 1834, and from that time until his death, you were acquainted with José Cornelio Bernal and his family; and if so, do you know where he resided in 1834, 1835, and 1836?

Ans. I was well acquainted with them; they lived in the house of the mayordomo, on what was formerly the corner of Dolores and Centre streets, at the mission Dolores.

6. Do you know where he next resided after leaving the house of the mayordomo?

Ans. On his farm, about two miles south of the mission, where he continued to reside until the time of his death.

7. On what lot do you reside at the mission?

Ans. A lot on the west side of Dolores street, known as the de Haro lot; the same which Francisco de Haro owned in his lifetime, and on which he built an adobe house, where he resided with his family.

8. State whether or not the ground to the rear of de Haro's lot,
87 lying between that and the foot-hills on the west, was occupied, improved, or cultivated from 1834 up to the time that the Americans came to the country, in 1846.

Ans. It was not.

9. What knowledge, if any, had you of any house, made either of wood or adobes, erected, used or occupied by said Bernal or his family, at any time, on the ground in the rear of de Haro's lot?

Ans. I never saw a house of any kind. I saw a foundation of adobes, but built by whom I know not. I never knew of Bernal's living there.

10. When for the first time, if ever, did you hear that the said Bernal or his family had a grant from the Mexican government of a lot in the rear of de Haro's lot, or anywheres in that vicinity?

88 Ans. It might have been six or eight years ago that I first heard of it.

11. When you first knew the mission, was there or not an acequia to the north of de Haro's lot, and was there or not an arroyo to the north of the acequia?

Ans. There was an acequia to the north of de Haro's lot, and there was a stream of water to the north of that, but I would not call it a regular arroyo.

(Counsel for claimant objects to the whole of the foregoing testimony as irrelevant.)

Cross-examination waived. Deposition closed.

CHARLES BROWN.

Sworn to and subscribed, August 12, 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28th, 1862.

W. H. CHEVERS, *Clerk.*

89 *Deposition of R. C. Hopkins.*

In the district court of the United States, for the northern district of California.

THE UNITED STATES *v.* C. S. DE BERNAL. } In land cases.—Dist. court, No. 165.—Land com. No. 671.

Be it remembered, that on this 12th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the intervenor, Dehon, in the above-entitled cause now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who being duly sworn, testified as follows:

Present: J. B. Crocket, esq., for intervenor, Dehon; A. C. Peachy,

90 esq., for claimant; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the intervenor, Dehon.

Question 1st. What is your name, age, place of residence, and occupation?

Ans. My name is R. C. Hopkins; I am of lawful age; I reside in the city of San Francisco; my occupation is that of keeper of the Spanish archives in the office of the United States surveyor, which position I have held for the last seven years.

2. State whether or not you have under your charge all the archives of the Mexican government pertaining to grants of land in California, between the years 1830 and 1840.

Ans. I have under my charge the archives of land grants for those years which formerly pertained to the secretaria of the former Mexican government of California. I cannot say that there do not exist archives of land grants during those years, that are not found among the archives under my charge. I have all the Spanish archives that are by law in the custody of the surveyor general, under my charge.

91 3. Have you or not made any examination of the said archives recently in reference to the grant of a lot, or solar, at the mission Dolores, alleged to have been made in 1834, or 1835, by José Figueroa, governor of California, to José Cornelio Bernal? If so, state the result of such examination.

Ans. I have made a careful search within the last five days for such grant in the archives, but have found no record of any such grant, or any evidence or trace of the fact that such grant was ever issued by Governor Figueroa.

(Counsel for claimant objects to the whole of the foregoing testimony as irrelevant.)

Cross-examination waived. Deposition closed.

R. C. HOPKINS.

Subscribed and sworn to this 12th day of August, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 28th, 1862.

W. H. CHEVERS, *Clerk.*

92 *Deposition of T. A. M. Castro.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* C. S. DE BERNAL *et al.* } In land cases.—Dist. court, No. 165.—Land com. No. 671.

Be it remembered, that on this 12th day of December, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Pablo Antonio Maria Castro, a witness produced in behalf of the claimants in the above-entitled cause now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Thomas Jewett, a sworn interpreter.

93 Present: Fred. Billings and John B. Williams, for the claimants; I. B. Crockett, esq., for the intervenor Theodore Dehon, and W. H. Sharp, esq., U. S. dist. att'y, for the United States.

Questions in behalf of the claimants.

Question 1st. What is your name, age and place of residence?

Ans. Pablo Antonio Maria Castro; 62 years of age, and reside at San Pablo, Cal.

2. Are you one of the family to whom was granted the San Pablo rancho?

Ans. I am.

3. Do you know the establishment of Dolores; and if so, how long?

Ans. I do; have known it about fifty years.

4. Did you know José Cornelio Bernal when he resided at the mission of Dolores?

94 Ans. Yes.

5. Did José Cornelio Bernal ever point out to you a lot of land at mission Dolores which had been granted to him by the Mexican authorities; and if so, in what year did he point out said lot to you?

Ans. He did; in 1834 or 1835.

6. Was there upon the said lot, at that time, any house or foundation of a house belonging to said Bernal?

Ans. Yes, sir; the foundation of a house which he was building at that time.

7. Can the situation of said house now be identified on the ground?

Ans. I believe it can.

8. Have you recently been upon the ground and pointed out the location of said house to Doctor Matthewson, who is now present?

95 Ans. I have, and I pointed out to him the location of the house.

9. Was that house generally known at the mission Dolores, about the year 1834 or 1835, as belonging to the said José Cornelio Bernal?

Ans. It was.

10. Do you know a sanja or ditch which existed near Bernal's house in 1834 or 1835?

Ans. I do.

11. Have you recently pointed out to Doct. Matthewson, upon the ground, the course of said sanja as it existed in those years?

Ans. Yes, sir.

12. Do you recollect the situation of the roads leading from the mission Dolores to Yerba Buena and the Presidio as they existed about that time; and if so, did you point out the junction of said roads to Doct. Matthewson?

Ans. I did.

96 13. Do you recollect the house that José Cornelio Bernal lived in while he was administrador of the mission; and if so, did you point it out to Doct. Matthewson?

Ans. I do recollect it, and believe I pointed it out to him.

14. Do you recollect an arroyo which, in the years before referred to, ran a short distance north of the sanja; and if so, did you point it out to Doct. Matthewson as it existed in those years?

Ans. I do recollect it, and did point it out to him.

(Counsel for the intervenor Dehon objected at the time to each of the foregoing questions and answers as incompetent and irrelevant.)

Cross-examination.

15. Where did you reside in 1834 and 1835?

Ans. At San Pablo.

16. How do you know that it was in 1834 or 1835 that Bernal

97 pointed out the lot to you? What enables you to fix the date?

Ans. Because I was at the mission in those years. He was building the house at the time, and he pointed out to me the place.

17. What sort of house was it he was building, and how much of it was done when you saw it?

Ans. It was an adobe house. It was almost as far as the eaves or the roof.

18. Was the house ever finished?

Ans. I do not remember; it was almost done when I last saw it.

19. When did you last see it?

Ans. In 1834 or 1835.

20. Were you at the mission in the years 1836, 1837, 1838, 1839 or 1840; and did you see the house?

Ans. I went to the mission every year, and saw the house.

98 21. Were the walls of the house standing in 1840?

Ans. I do not remember.

22. When did Bernal move into the house?

Ans. I do not remember. I have already stated that he pointed out to me the boundaries of his land at the time he was building the house. The house was not quite finished.

23. When you saw the house, in the years after that, was Bernal living in it?

Ans. No, sir.

24. Who was living in it?

Ans. Some Indians who were working for Bernal.

25. Was the house finished when the Indians were living in it?

Ans. Not quite.

26. Was it ever finished?

Ans. It was.

99 27. What became of the house; was it still standing when the Americans came to the country?

Ans. I never saw it after the Americans came to the country; it is a long time since I last saw it.

28. In what year did you last see it; was it before or after 1842?

Ans. I have already stated that I saw the house in 1834 or 1835, at the time that Bernal pointed out to me the boundaries of his land; I don't remember the last time I saw it.

29. Are you certain that the house was ever finished, and that the walls did not fall down from the rains before the roof was on?

Ans. It was almost done; men were working at it, and I suppose it was finished; a great deal of work had been done; the roof was to be placed.

30. Did you yourself ever see a roof on the house?

100 Ans. I saw the roof when it was formed; everything was ready to have it placed on.

31. In the last question you are asked if you had ever seen, with your own eyes, the roof, after it was on the house; please answer that question.

Ans. With my eyes I have seen the roof already formed; I did see the roof on the house.

32. In what year did you see the roof on the house?

Ans. In 1834 or 1835.

33. In what year did you see the Indians occupying the house?

Ans. The same years.

34. How many years did the Indians occupy it?

Ans. I do not remember. The deceased Bernal told me that his land commenced from his house sixty varas towards the establishment of the

101 mission, taking the direction of the de Haro's house.

37. Was de Haro's house then built?

Ans. It was.

38. What house of de Haro's do you refer to?

Ans. The old one, on the corner where the sanja passes.

39. Was de Haro's house, which you refer to, the same one now occupied by Charles Brown as a stable?

Ans. I do not know who is living in it.

40. Do you know where the ruins of the house of the Escolta of the mission were in 1834?

Ans. Yes, sir.

41. Were they not to the north of the "casa principal," and adjoining to it?

Ans. Yes, sir.

102 42. Did not de Haro's house stand upon the same place where the ruins of the houses of the Escolta were.

Ans. The house to which I refer is the one situated on the corner and adjoining the sanja. De Haro's house did not stand on the place designated in the question.

43. Is the house of de Haro still standing; did you see it when you were at the mission last?

Ans. It is; I saw it when I was there last.

44. Is it not a little to the north of the house in which Charles Brown now lives?

Ans. It is between Cha's Brown's house and the corner to the north and northwest of it.

45. In what direction was Bernal's house, and how far from de Haro's house?

Ans. The house of Bernal was situated in a northwesterly direction, and about 100 varas from de Haro's house.

103 46. You say that the Indians who occupied Bernal's house were employed by him. How were they employed; what did they do?

Ans. They had a little house. Some of them were cultivating the land, and making mud or mortar to plaster the house.

47. Where did the Indians cultivate land; was it around Bernal's house, or near it?

Ans. Near the house.

48. Did they cultivate the ground which Bernal said had been granted to him?

Ans. Yes, sir.

49. How many years did the Indians cultivate that ground?

Ans. I do not remember.

50. In what house did Bernal reside in 1834, 1835?

104 Ans. In the house of the mayordomo.

51. Did not Bernal remove in 1834 or 1835 from the mayordomo's house to his ranch?

Ans. I do not remember.

52. Was there not in 1834 or 1835, and has there not been ever since, an arroyo to the north of the adobe house which you say was built by Bernal?

Ans. Yes, sir.

53. Did the sanja, to which you have referred, run between the adobe house and the arroyo?

Ans. Yes, sir.

54. Is that sanja the same which ran near?

Ans. It is.

Deposition closed.

PABLO ANTONIO his + mark. MARIA CASTRO.

Sworn to and subscribed this 12th day of December, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com'r.*

105 Endorsed: Filed December 16th, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Gabriel Castro.

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. C. S. DE BERNAL *et al.* } In land cases.—District court No. 165 Land com. No. 671.

Be it remembered that on this 12th day of December, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Gabriel Castro, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the
106 State of California, who, being duly sworn, testified as follows; his evidence being interpreted by Augustus D. Splivalo, a sworn interpreter.

Present: Fred. Billings and John B. Williams, for claimants; J. B. Crockett, for the intervenor, Theodore Dehon; and W. H. Sharp, U. S. att'y, for the United States.

Questions in behalf of the claimants.

Question 1. What is your name, age, and place of residence?

Ans. Gabriel Castro; 48 years of age; and reside at San Pablo, Contra Costa county, Cal.

2. Are you one of the family to whom was granted the San Pablo rancho?

Ans. I am.

3. Do you know the establishment of Dolores; and if so, how long?

Ans. I do; have known it ever since 1834 or 1835.

4. Did José Cornelio Bernal ever point out to you a lot of land at
107 mission Dolores which had been granted to him by the Mexican authorities; and if so, when did he point it out to you?

Ans. He did. I don't remember whether it was in 1834 or 1835.

5. Was there upon said lot at the time any house, or foundation of a house, belonging to said Bernal?

Ans. There was a foundation, for he was building.

6. Can the situation of said house be now identified on the ground?

Ans. It can.

7. Have you recently been upon the ground, and pointed out the location of said house to Doct. Matthewson, who is now present?

Ans. I have.

8. Was that house generally known at the mission in the years 1834 or 1835 as belonging to said Bernal?

Ans. Yes, it was.

108 9. Do you know a sanja, or ditch, which existed near Bernal's house in 1834 or 1835?

Ans. I did.

10. Have you recently pointed out to Doct. Matthewson upon the ground the course of said sanja as it existed in those years?

Ans. I have.

11. Do you recollect the situation of the roads leading from mission of Dolores to Yerba Buena and the Presidio as they existed at that time; and if so, did you point them out to Doctor Matthewson?

Ans. I do recollect their situation, and did point them out to Doctor Matthewson.

12. Do you recollect the house that said Bernal lived in while he was mayordomo of the mission; and if so, did you point it out to Doct. Matthewson?

Ans. I do recollect it, and pointed it out to Doct. Matthewson.

109 13. Do you recollect an arroyo which in the years before referred to ran a short distance north of the sanja; and if so, did you point it out to Doct. Matthewson as it then existed?

Ans. I do recollect, and did point it out to that gentleman.

(Counsel for the intervenor, Dehon, objected at the time to each of the foregoing questions and answers as incompetent and irrelevant.)

Cross-examination.

14. How did Bernal happen to point out to you the lot referred to?

Ans. While I was at the mission he showed it to me.

15. What circumstance enables you to remember, after the lapse of near thirty years, that he pointed out the lot to you?

Ans. I remember because he told me, Come and see the house I am
110 building. It was thus I knew it was his house and lot.

16. Did you ever see the house after it was finished?

Ans. I saw it when the walls were finished. I did not see it when it was fully completed.

17. Did not said walls fall down, from the rains, before the house was completed?

Ans. I suppose they fell down, because I never saw a roof on the house. I saw nothing but the walls.

18. What grounds did Bernal point out to you as his?

Ans. The lot on which he was building.

19. What was the boundary of the lot on the north?

Ans. I suppose the arroyo or the sanjon. The fact is that he told me he had petitioned for the ground on which he was building, and that he had obtained 200 varas; that he had 200 varas from the house.

111 20. What do you mean by 200 varas from the house?

Ans. I mean that his lot was of 200 varas; I suppose the house was in the centre, 100 varas one side, 100 varas on the other; 60 varas on one side and 40 on the other; said house was 60 varas distant from the houses of the mission establishment.

21. Did he point out to you any one of the boundaries of the said lot?

Ans. He did. He showed me the boundary I have stated, viz: the ruins of the houses of the soldiers; he said he had 60 varas from the house he was building to the houses of the soldiers; I asked him how much land he had; he said 200 varas.

22. Did he say that his lot was 200 varas on each of the four sides, or 200 varas on two of the sides, and 100 varas on each of the other two sides?

112 Ans. He told me he had sixty varas from the houses of the soldiers to his house. I asked him how much ground he had altogether. He said 200 varas; how these 200 varas ran I do not know.

23. When you say that his house was 60 varas from the houses of the soldiers, do you mean from the houses of the escolta?

Ans. I do.

24. Do you know the house which Francisco de Haro afterwards built at the same place where the houses of the escolta had been?

Ans. I do not.

25. Do you know where Charles Brown now resides with his family?
Ans. I do.
26. Is there not an old adobe house now standing a little to the north of the house in which Brown resides?
Ans. There is.
113 27. Who built and occupied that adobe house?
Ans. I don't know who built it; I suppose the mission occupied it.
28. Had that adobe house been built when Bernal pointed out this ground to you?
Ans. I do not remember.
29. How far was it from the houses of the escolta at the nearest point of them to Bernal's house?
Ans. I suppose 60 or 70 varas, more or less.
30. Where did Bernal live at that time?
Ans. At the corner, in the adobe house of the mayordomo.
31. Where did Bernal remove to when he left that adobe house?
Ans. I do not know.
32. Was not Bernal mayordomo of the mission in 1834 and 1835?
Ans. He was.
114 33. Was the ground lying between the houses of the escolta and the foot-hills towards the west ever enclosed or cultivated before the Americans came to the country?
Ans. I do not know.
34. Do you know of Francisco de Haro ever having occupied with his family the adobe house near to Charles Brown's house?
Ans. I do not know.
Deposition closed.

his
GABRIEL + CASTRO.
mark.

Sworn to and subscribed this 12th day of December, A. D. 1862, before me.
W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed December 16, 1862.
W. H. CHEVERS, *Clerk.*

Deposition of R. C. Matthewson.

115 In the district court of the United States for the northern district of California.

THE UNITED STATES vs. C. S. DE BERNAL *et al.* } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 15th day of December, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared R. C. Matthewson, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:
116 Present: Fred. Billings and John B. Williams, for claimants; J. B. Crockett, for the intervenor, Theodore Dehon; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of claimants.

Question 1st. What is your name, age, occupation, and place of residence?

Ans. R. C. Matthewson; 43 years of age; civil engineer and surveyor; and reside in San Francisco.

2nd. Examine the plat now shown you, and to be annexed to your deposition, marked "Exhibit Matthewson, No. 1," and state when the survey which it represents was made, by whom, and from what date?

Ans. It was made by me a week or two ago. A portion was made from actual surveys of the old adobe buildings on the ground, and portions from statements made by the witnesses, Pablo Antonio Maria and Gabriel Castro, whose depositions have just been given, and portions were made from official surveys. Tract No. 1 represents the official survey of the
117 Suerte en Dolores. No. 2, the Bernal tract. No. 3, the De Haro tract. No. 4, one of the mission tracts. The red lines showing the boundaries of the several tracts according to the official surveys.

3. State the cause of conflict of the surveys of the tracts Nos. 2, 3, and 4.

Ans. The cause is that the different deputy surveys who made the surveys make certain points which are different on the ground identical in the surveys or on the plats.

4. Did you make an actual survey on the ground of the tract marked 4; and if so, from what data?

Ans. I did not make a survey of it; I merely corrected it with the other surveys. The southeast corner of the tract is described in the patent as beginning at a rock marked with the sign of the cross at the southeast corner of the cemetery; I could not find the rock, and therefore commenced at a square stake driven in the ground at the southeast corner of the
118 cemetery, and thence connected the mission tract with that of the Suerte en Dolores by running a line to the granite block at the southeast corner of that tract.

5. Are the mission buildings laid down correctly on your exhibit?

Ans. They are.

6. Look at the diseño forming part of the expediente on file in case No. 131, the U. S. *vs.* Josefa Palomares *et al.*, and state whether you have located on Exhibit Matthewson, No. 1, the positions of the natural and artificial objects shown on said diseño as they existed at the time said diseño purports to have been made; and if so, upon what information?

Ans. I have so located them; the junction of the roads leading from the mission Dolores to Yerba Buena and to the Presidio are laid down upon information given by witnesses before spoken of; and the sanjo, or ditch, and the buildings represented on said diseño, are located from actual sur-
119 veys made on the ground.

7. State what is intended to be represented by the small square in the Bernal tract, and upon what information was it located by you.

Ans. The adobe house, or its foundation, spoken of by the former witnesses, the locality of which was pointed out to me by them.

8. Did you notice at that place any indications of the remains of the foundation of the building?

Ans. I cannot say that I did; there were some stones there which the witnesses told me that they thought were a part of the old foundation.

9. State the distance from the northwest corner of the mission buildings to the nearest point of the Bernal tract as surveyed, correcting the conflict between the church survey and the Bernal survey.

Ans. The distance is two chains and thirty-four links, or a little
120 more than 55½ varas, which I have marked on said exhibit by a dotted line.

10. Now state the distance from the northeast corner of the mission buildings or establishment to the northeast corner of the Bernal tract as surveyed.

Ans. It is about six chains and eighty links, or 161 $\frac{38}{100}$ varas, which I have also marked with a dotted line on said exhibit.

(Counsel for the intervenor, Dehon, objected at the time to each of the foregoing questions and answers as incompetent and irrelevant.)

Cross-examination.

11. State whether the sanja, or water ditch, laid down on "Exhibit Matthewson, No. 1," from its location and general appearance, is an artificial ditch or the natural bed of a stream?

Ans. It is undoubtedly an artificial ditch.

121 12. Was the arroyo, which is laid down on said exhibit, located by an actual survey or an approximate one?

Ans. Several points of it were located by running lines from the sanja, or water ditch, and the intermediate distances between the points located approximately.

13. Is the arroyo, as laid down, the main stream; or does the great body of the water supplied by the spring from which the said arroyo comes flow towards the southeast to the north of the arroyo, as laid down by you?

Ans. It is the main arroyo where it crosses the road to the Presidio, but in the valley to the northwest of this point. I think the main body of the water is conveyed in various ditches to the north of the channel of the arroyo, as laid down on said exhibit.

14. From your previous knowledge of the ground, acquired by prior

122 surveys, can you state whether the arroyo, as laid down on the said exhibit, was originally the main bed of the stream, or whether the chief body of the water passed further to the north near where the ditches are now made?

Ans. I cannot, positively. I am of opinion, however, that, before the land was cultivated, the valley northwest of the Presidio road was a marshy flat without any well-defined channel.

15. State whether or not the arroyo, as laid down on said exhibit, extends further towards the northwest than as indicated on said exhibit.

Ans. It does not.

16. What is the small crooked line, with an arrow at the end, at the northwest corner of survey No. 1, intended to indicate?

Ans. It indicates an arroyo well defined at that point.

17. What direction does the said arroyo take from that point?

123 Ans. A southeasterly direction, but a little below. I think the water is diverted through various ditches, in different directions, so that at present it has no regular channel until it unites with the other arroyo near the Presidio road.

18. State whether or not the arroyo laid down on said exhibit, and marked arroyo, is supplied with water from the other arroyo.

Ans. I think it is partially from the arroyo marked on the northwest corner of tract No. 1, and partially from other sources.

19. Which is the larger of the two arroyos above the junction?

Ans. The arroyo at the northwest corner of tract No. 1 is larger than the one marked arroyo, before the water conveyed in the ditches in the valley enters it above the crossing of the Presidio road, but below that crossing I believe the other is the larger.

124 20. What is the distance at the nearest points between Bernal's house, as indicated on your map, and the arroyo laid down on your map?

Ans. About three chains and seventy-five links, or 89 varas.

21. What is the distance between Bernal's house and the Casa de Haro, as indicated on your map?

Ans. About four chains and twenty-six links, or 101 $\frac{1}{10}$ varas.

22. Did you find on the ground, at the place where you have located Bernal's house, anything to indicate that an adobe building had ever stood there?

Ans. I did not. Nothing but a few rocks, which the said witnesses said had been a part of the foundation.

23. Were the rocks lying in line imbedded in the ground, having the appearance of an ancient foundation, or loosely on the surface?

125 Ans. They were in a line partially imbedded in the ground along the side of a fence, and did not appear to indicate the foundation of a house in their present location.

24. Is not the ground in that vicinity all fenced up, and the greater part of it under cultivation?

Ans. It is fenced up and cultivated as a vegetable garden.

25. Assuming the easterly and southerly lines of tract No. 2 to have been protracted until they unite so as that the whole tract to be in a square shape, how far would it be, and in what direction, from the northwest corner of the main mission building to the point of junction of the said lines?

Ans. It would be in a southwesterly direction three chains and seventy links, or 87 $\frac{81}{100}$ varas.

26. Supposing the said lines to have been projected, as in last question, how much land would be embraced in the interference between tracts No. 4 and No. 2 projected as aforesaid?

126 Ans. About one acre and sixteen hundredths of an acre.

27. How far is it from the westerly line of the mission building to the nearest point of the easterly line of survey No. 2 projected?

Ans. About one chain and seventy-three links, or 41 $\frac{6}{100}$ varas.

28. How is the land now occupied and used which is included in the interference between survey No. 4 and survey No. 2 with the easterly and southerly lines projected?

Ans. I did not run the lines, but I think the main portion of it is occupied by the mission cemetery.

29. Supposing the black line crossing from west to east through the diseño in case No. 131 be intended to indicate an arroyo: state whether or not it is the same arroyo marked arroyo on your map.

(Question objected to by counsel for claimant as being irrelevant,

127 and there is nothing on the diseño to show that an arroyo was intended to be represented by said line.)

Ans. I think not; for this black line appears to lie north of the valley and on the side hills corresponding pretty nearly, in my opinion, with the hills marked "sand-ridge covered with brush wood" on the exhibit.

(Counsel for intervenor, Dehon, objects to last part of the question as being irresponsive)

Deposition closed.

R. C. MATTHEWSON.

Sworn to and subscribed this 15th day of December, 1862, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed December 16, 1862.

W. H. CHEVERS, *Clerk.*

(Here follows exhibit, Matthewson No. 1, large map.)

Deposition of A. M. Peralta.

128 In the district court of the United States for the northern district of California.

THE UNITED STATES vs. C. S. DE BERNAL *et al.* } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 14th day of January, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Antonio Maria Peralta, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being interpreted by C. F. Galan, a sworn interpreter.

129 Present: Frederick Billings and Jno. B. Williams, for the claimants; J. B. Crockettt, for int'r, Dehon; and W. H. Sharp, U. S. att'y.

Questions in behalf of the claimant.

Question 1. What is your name, age, and place of residence?

Answer. My name is Antonio Maria Peralta; my age is 60 years; and I reside on the rancho San Antonio, Alameda county.

2. How long have you lived on the San Antonio rancho?

Ans. Since 1820.

3. Do you know the establishment of Dolores; if so, since when?

Ans. I know it since 1815.

4. Did you know José Cornelio Bernal in his lifetime; if so, did he ever point out to you a lot of land at the mission Dolores which had been granted to him by the Mexican authorities?

130 (Objected to as incompetent.)

Ans. I knew him, and he pointed out to me the lot.

5. State in what year Bernal pointed out the land mentioned. State the situation of the said land, and whether there was a house, or the foundation of any house, upon it.

(Same objection as last.)

Ans. About the year 1835 or 1836 Bernal took me over to see the lot. The house was already commenced; the walls were up, and they were covered up with brush—branches of trees. The house was situated about three hundred varas from the church, on the margin of a little creek; a little place was made where they drew the water from.

6. Can you describe the mission Dolores as it existed in 1815, when you first knew it, up to 1835 or 1836? I mean the position of the buildings, the situation of the roads, etc.

131 Ans. I cannot with my mouth do it; but with the help of this paper, made by myself, perhaps I can.

Witness produces a sketch, and the different objects upon it are marked thereon by the commissioner as directed by the witness. The sketch is hereto attached, and made part of the answer.

7. Did Bernal point out to you any of the boundaries of his lot? If so, state which.

(Objected to as incompetent.)

Ans. He told me that it was bounded on one side by the mission houses, on the other side by the creek, on the other two sides I do not remember whether he pointed them out. He told me that two hundred varas had been granted to him.

(Answer objected to as incompetent evidence.)

Cross-examination.—Questions by counsel for intervenor, Dehon.

Ques. 8. Are you certain that it was in 1835 or 1836 that Bernal
132 pointed out to you the house?

Ans. It seems so to me.

9. Where did Bernal live at that time?

Ans. He was living on his ranch.

10. When did he remove from the house of the mayordomo to his ranch?

Ans. I do not know when.

11. Was he mayordomo of the mission at the time he pointed out the lot to you?

Ans. I do not recollect.

12. What became of the house which Bernal pointed out to you? Was it ever finished or occupied?

Ans. I do not know that it was finished; I very seldom came to the mission. I don't know whether it was ever occupied or not.

133 13. Is the arroyito, marked on the diagram which you have produced, the only one which was in that vicinity to the north of Bernal's house?

Ans. Yes, sir; the only one.

14. Is that arroyito the one which Bernal pointed out to you as the boundary of his lot on the north?

Ans. Yes, sir.

15. About how many varas was it from Bernal's house to the arroyito on the north?

Ans. About forty varas, more or less.

16. Have you been upon the ground within the last few days, or at any time recently?

Ans. Since 1846 I have been but twice to the mission—once in the stage, on my way to San José, and the last time about four or five years ago.

17. Did the arroyito run through a monte or sausal to the north of Bernal's house?

134 Ans. One side of the sausal, the southern side, was passed by it. It run on the southern side of the sausal when I saw it.

18. Did the arroyito take its rise or have its source in a spring near the foot of the hills towards the west?

Ans. I never saw the sausal.

19. Were the waters of the sanja supplied from the arroyito?

Ans. Yes, sir.

Deposition closed.

ANT'O M'A PERALTA.

Sworn to and subscribed this 14th day of January, A. D. 1863, before me.
W. H. CHEVERS, *U. S. Com.*

[Here follows sketch or map, page 134.]

Endorsed: Filed January 15th, 1863.

W. H. CHEVERS, *Clerk.*

135 *Deposition of Domingo Feliz.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* C. S. DE BERNAL *et al.* } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 14th day of January, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Domingo Feliz, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being interpreted by C. F. Galan, a sworn interpreter.

136 Present: Fred'k Billings and Jno. B. Williams, for the claimants; J. B. Crockett, for int., Dehon; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Domingo Feliz; I am 43 years of age; I reside on the Burri Burri rancho, San Mateo county; my occupation is that of a farmer.

2. Do you know the establishment of Dolores? If so, since when?

Ans. I know it, and have known it since I was baptized there.

3. Did you know José Cornelio Bernal, and whether he had a lot at the mission Dolores, which was granted to him by the Mexican authorities?

(Objected to as incompetent.)

Ans. I did.

137 4. When did you first know said lot, and how did you know that it was granted to said Bernal?

Ans. I have known the land for many years, and Bernal told me that the Mexican government had granted him two hundred varas of it.

(Question and answer objected to as incompetent.)

5. Where was the lot situated, and what were its boundaries?

Ans. It was situated back of the mission houses; the boundaries were the soldiers' houses on one side; the creek on the other. He did not tell me the others.

6. Did you ever see a house, or the foundation of a house, on the lot? If so, in what years?

Ans. I have seen a house in process of erection there; I don't recollect the years.

7. How many varas, more or less, was said house from the mission church?

138 Ans. About three hundred varas, more or less.

Cross-examination.—Questions by counsel for int'r, Dehon.

Ques. 8. How far was Bernal's house from the soldiers' quarters?

Ans. About one hundred varas, more or less.

9. Are you certain that Bernal told you that his lot was bounded on one side by the soldiers' quarters?

Ans. Yes, sir.

10. Did Bernal claim the ground lying between his house and the soldiers' quarters?

Ans. I believe so. I don't know whether he claimed up to the soldiers' houses; but those were the boundaries he told me.

Deposition closed.

DOMINGO FELIZ.

Subscribed and sworn to this 14th day of January, A. D. 1863, before me.
W. H. CHEVERS, *U. S. Comm'r.*

139 Endorsed: Filed January 15, 1863.
W. H. CHEVERS, *Clerk.*

Deposition of J. T. Hernandez.

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. C. S. DE BERNAL *et al.* } In land cases.—Dist. court No. 165. Land com. No. 671.

Be it remembered that on this 14th day of January, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared José Teodoro Hernandez, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said
140 court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows; his evidence being interpreted by C. F. Galan, a sworn interpreter.

Present: Fred'k Billings and Jno. B. Williams, for the claimants; J. B. Crockett, for intervenor, Dehon; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is José Teodoro Hernandez; my age is 55 years; I reside in Pachecoville, Contra Costa county.

2. Do you know the establishment of Dolores? If so, since when?

Ans. I know it. I was raised there; I know since I attained the age of reason in 1817.

3. Did you know José Cornelio Bernal, who once resided at the
141 mission Dolores; and if so, did he ever point out to you a house he was building on a lot which he said had been granted to him by the Mexican authorities?

(Objected to as incompetent.)

Ans. I knew him, and he pointed out to me the house he was building.

4. In what year did he so point out said house, and for what reason did he so point it out to you?

Ans. He pointed it out to me in 1836; he wished to engage my services as a carpenter to make doors, windows, etc., to finish the house. The walls of the house were up, and places were left open for the doors and windows, and it was covered with brush. I engaged myself to finish the house, but I went to the pueblo of San José, and was taken sick there. I went to Monterey to relieve my sickness, and never worked on the house.

142 5. Did Bernal at that time point out to you the boundaries of his land?

Ans. No; he only told me that he had two hundred varas there.

(Answer objected to as incompetent.)

6. How many varas, more or less, was the house from the mission church, and in what direction?

Ans. It may have been three hundred varas, more or less, from the church, and towards the east.

7. Was the house from the church in the direction of the Presidio, Yerba Buena, or Mission creek?

Ans. It was back of the soldiers' quarters, near a creek and above a sausal.

Cross-examination.—Questions by counsel for intervenor, Dehon.

Ques. 8. Did the arroyo run through the cienega, or one side of it?

143 Ans. It was not permanent; it would sometimes run one side of it, and the other. A heavy rain would change the direction of the creek.

9. In 1836, how wide was the space between the zanja, near Bernal's house, and the arroyo?

Ans. Some twenty-five or thirty varas, more or less.

10. Does not the zanja pass along the edge of the high ground, and the arroyo run in the valley?

Ans. The zanja runs along the edge of the high ground, and the arroyo runs below.

11. Have you been on the ground lately?

Ans. No, sir.

12. How many years is it since you last saw the arroyo you spoke of?

Ans. I cannot say; since 1840 I have been there very seldom, and

144 have not paid any attention to it.

Deposition closed.

his
JOSÉ F. × HERNANDEZ.
mark.

Sworn to and subscribed this 14th day of January, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed January 15th, 1863.

W. H. CHEVERS, *Clerk.*

145 *Deposition of W. P. Humphreys.*

In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases.—Dist. court No. 165. Land Com.
v. } No. 671.
C. S. DE BERNAL *et al.* }

Be it remembered that on this 25th day of March, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a

commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared William P. Humphreys, a witness produced in behalf of intervenor, Dehon, in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present : J. B. Crockett, esq., for int., Dehon ; F. Billings, esq.,
146 and J. B. Williams, esq., for claimant ; and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the int., Dehon.

Question 1st. Are you the same Wm. P. Humphreys who has been heretofore examined in this case ?

Ans. I am.

2. Do you know the place occupied by Francisco Ruffino at the mission Dolores, and the south line of the place occupied by Chas. Brown, which divides his place from Ruffino ?

Ans. I do.

3. Examine the paper now shown to you, purporting to be a deed from Joseph S. Alemany, archbishop, to Thomas M. J. Dehon, and marked Exhibit Humphreys, A, to be annexed to this deposition, and state whether or not the land embraced in said deed embraces any of the land within the space marked with the letters A B C D, in pencil, on Exhibit Hum-
147 phreys, No. 1, on file in this cause, assuming that the south line of the De Haro lot is the dividing line between Ruffino and Brown, to which you have referred.

Ans. It does. It embraces all of that lot marked by the letters A B C D.

The foregoing testimony is objected to as incompetent and irrelevant.

Cross-examination waived. Deposition closed.

W. P. HUMPHREYS.

Subscribed and sworn to this 25th day of March, A. D. 1863, before me.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Exhibit Humphreys "A," annexed to depo. of W. P. Humphreys.

148 Know all men by these presents that I, J. S. Alemany, (archbishop of the arch diocese of San Francisco,) a corporation sale, constituted under the laws of the State of California, party of the first part, in consideration of the sum of one dollar paid by Thomas M. J. Dehon, of the same place, party of the second part, to me in hand, the receipt whereof I do hereby acknowledge, have bargained, sold, and quitclaimed, and by these presents do bargain, sell, and quitclaim, unto the said Thomas M. J. Dehon, and to his heirs and assigns forever, all the right, title, interest, estate, claim, and demand, both at law and in equity, and as well in possession as in expectancy, of, in, and to all that certain piece or parcel of land and tenements which appertains, rests, or resides in the Roman Catholic church, or the Mission Dolores church, or parish, or corporation, now in San Francisco, and all of my right and title, whether personal or otherwise, or as overseer, or minister, or agent of said church and diocese, which said land and tenements are bounded and described as follows to wit :

149 Commencing at a point on the west side of Dolores street forty-five feet south of the southern line of boundary of the 100-vara lot claimed by the Haro family; thence running southerly along Dolores street (75) seventy-five feet; thence westerly and parallel with the southern adobe wall of the north wing of the mission adobe buildings (said wing being sometimes called the Bull's Head premises) a distance of one hundred and ninety-six (196) feet; thence northerly and parallel with the west line of wall of said north wing fifty-nine (59) feet; thence S. 82° W., four $\frac{94}{100}$ chains, (4.94 ch.;) thence S. 4° 15′ E., five $\frac{26}{100}$ chains, (5.26 ch.;) thence S. 78° 15′ W., eleven $\frac{92}{100}$ chains, (11.92 ch.;) thence N. 5° 15′ E., seven $\frac{23}{100}$ ch., (7.23 ch.;) thence N. 82° 15′ E., sixteen $\frac{16}{100}$ ch., (16.16 ch.;) thence southerly in a line with the west wall of north wing aforesaid forty-five feet; thence easterly about one hundred and seventy-five feet to the place or point of beginning, with all and singular the hereditaments and appurtenances thereunto belonging.

And the said party of the first part the said party of the second part
150 in the said demised premises shall and will forever defend against all persons lawfully claiming by, through, or under, the said party of the first part.

In witness whereof, I have hereunto set my hand and seal this seventh day of February, A. D. eighteen hundred and fifty-four.

\+ JOSEPH S. ALEMANY, [SEAL.]
Bp. S. Franc'o.

Sealed and delivered in presence of—
EUGENE CAPERLY.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this 15th day of February, 1854, before me, Wm. A. Cornwall, a notary public in and for said county, personally appeared Eugene Caperly, known to me to be the individual who affixed his name to the foregoing instrument as subscribing witness, and who, being duly sworn, deposes and says: that he witnessed the execution of said instrument by Joseph S. Alemany, and that the said Alemany then and there acknowledged that he exe-
151 cuted the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal.
[SEAL.] WM. A. CORNWALL,
Notary Public.

[Here follows map attached to deed, page 151.]

Recorded in county recorder's office, San Francisco, March 22d, 1854, at 12 m., in liber 34 of deeds, page 683.

JAMES GRANT, *County Recorder.*

Endorsed: Filed April 6th, 1863.

W. H. CHEVERS, *Clerk.*

152

Dep. of R. C. Hopkins, on part of int., Dehon.

153 In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases.—Dist. court No. 165. Land com. No.
v. } 671.
C. S. DE BERNAL *et al.* }

Be it remembered that on this 25th day of March, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a com-

missioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of intervenor, Dehon, in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: J. B. Crockett, esq., for int'r, Dehon; F. Billings, esq, and J. B. Williams, esq., for claimant; and W. H. Sharp, U. S. att'y, for the U. S.

154 *Questions in behalf of the intervenor, Dehon.*

Question 1st. Are you the same R. C. Hopkins who has been heretofore examined in this case?

Ans. I am.

2. State whether or not, since your former deposition was taken in this cause, you have examined the archives in the office of the surveyor general of California with a view to ascertain whether or not the said archives contain any grant or evidence of a grant or concession for lots at the mission Dolores made by the governor or any alcalde or prefect prior to the year 1833? If so, state the result of such examination.

Ans. I have; and have found no record or other evidence of grants of lots at the mission Dolores prior to 1835.

3. Examine the paper now shown to you, marked Exhibit Hopkins A, and state what it is.

Ans. It is a translation made by myself of the 17th article of the regulations of colonization, the original of which is on file in the archives.

155 This is a correct translation.

4. Examine the paper now shown to you, marked Exhibit Hopkins B, and state what it is.

Ans. It is a correct translation of a portion of the proceedings of the territorial deputation had on the 12th day of September, 1835, the original of which is found in the journals of that day, as the same are found on file in the archives.

5. Examine the document now shown to you, marked Exhibit Hopkins C, and state what it is.

Ans. It is a correct translation of articles 1st, 5th, and 13th of the provisional regulations for the secularization of the missions, dated 9th August, 1834, the original of which is on file in the archives.

6. Examine the paper now shown to you, marked Exhibit Hopkins D, and state what it is.

Ans. It is a correct translation of a letter from Prefect José Castro to Governor Alvarado, dated November 25th, 1839, in relation to granting lots in the mission Dolores, together with the governor's marginal order thereon, the original of which is on file in the archives.

156

7. Examine the paper now shown to you, marked Exhibit Hopkins E, and state what it is.

Ans. It is a correct translation of a letter from Justice de Haro to Gov. Figueroas, dated July 15th, 1835, in relation to the granting of lots in Yerba Buenas, together with the governor's marginal order thereon, the original of which is on file in the archives.

8. Examine the paper now shown to you, marked Exhibit Hopkins F, and state what it is.

Ans. It is a correct translation of the petition of José Cornelio Bernal for rancho Los Salivas y Visitacion, and the decree of the governor refusing to make such grant, the original of which is on file in the archives.

9. Is there or not on file in the archives an inventory or descriptive list of all papers remaining in the juzgado of the mission Dolores from the year 1829 to 1839? If so, state whether the said papers contain any
157 reference to any application of José Cornelio Bernal for the grant of a lot at the mission Dolores, or any reference to such grant or concession.

Ans. There is such an inventory on file in the archives, but it contains no reference to any such grant, or any application for the same.

10. Are all the original documents, of which you have spoken as on file in the archives, genuine documents?

Ans. They are all unquestionably genuine documents.

(The foregoing testimony is objected to as incompetent, because the validity of the claim in this case has been finally determined, leaving open the question of survey and location alone.)

Cross-examination waived.

Deposition closed.

R. C. HOPKINS.

Subscribed and sworn to March 25, 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

158 *Exhibit Hopkins A, annexed to dep. of R. C. Hopkins.*

Art. 17th of regulations of colonization.

In the territories in which there may be missions, the lands which these occupy cannot for the present be colonized until it is determined if they are to be considered as the property of the reducciones of the neophytes, catechumens, and Mexican settlers.

II. Missions and colonization—4.

The above is a correct translation of the original.

R. C. HOPKINS.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins B, annexed to dep. of R. C. Hopkins.

Extract from the journals of the territorial deputation of the 12th of Sept, 1835.

"A second reading was given to the report of the committee on government, which concludes with the following propositions:

"1st. The lands of the missions cannot be conceded, the same being
159 conceded, the same being prohibited by the regulations of colonization; and this proposition being put to discussion, the president asked that the discussion be suspended until the committee on missions could be present.

"Señor Alvarado said that he did not think it proper to put off the discussion, because he considered it very proper that those called 'de razon,' (white people,) should establish themselves among the Indians, in order that, from their example, they might learn useful lessons; he therefore asked that the report be rejected.

"Señor Cassarin (Man'l Jimeno) said that, up to this time, there had been no example of those called 'de razon,' establishing themselves with the Indians on the lands of the missions; and that, besides, the same was prohibited by the regulations for the secularization of the missions, so that, for the present, the lands of the missions cannot be colonized until it is known whether or not the Indians are the owners of the same, as indicated by the same reglamento.

"Señor Alvarado replied that, in his opinion, the settlement of those called 'gente de razon' in the missions was not to colonize, according to article 17 of the regulations, which is cited by the committee, and
160 that it was not necessary to speak any further upon the subject; that the committee on missions was also occupied in the matter; wherefore he asked that the report be rejected.

"Señor Cassarin (Man'l Jimeno) said that he understood to be colonized all the lands that are being conceded by the government, since, under this order, lands are being conceded."

II. Legislation records—275.

The foregoing is a correct translation of the original.

R. C. HOPKINS.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins C, annexed to dep. of R. C. Hopkins.

Extract from the provisional regulations for the secularization of the missions, dated Aug. 9th, 1834.

"Art. 1st. The political chief, in accordance with the spirit of the law of the 17th of August, 1833, and with the instructions received from the supreme government, acting in concert with the prelates of the religious missionaries, shall convert the missions of this territory into pueblos,
161 commencing on 1st of August next, (1835,) executing this with ten, and successively with the others.

"Art. 5th. To each individual head of family, and to all those who may be more than twenty-one years of age, although they may not be heads of families, there shall be given of the common lands of the missions, de temporal or de regadio, one solar, which shall not exceed in extent 400 varas square, nor be less than one hundred varas square; there shall be given in common sufficient lands for the pasturage of their stock. Ejidos shall be set apart for each pueblo, and at the proper time propios shall be designated.

"Art. 13th. General inventories shall be formed of all the property of each mission, with the proper separation, and explanation of each branch," &c.

II. Missions and colonization—363.

The foregoing is a correct translation of the original.

R. C. HOPKINS.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

162 *Exhibit Hopkins D, annexed to dep. of R. C. Hopkins.*

Letter from Prefect José Castro to Governor Alvarado, in relation to granting lots in Dolores.

MOST EXCELLENT SIR: The residents of the municipality of San Francisco have made various verbal representations to me, through the justice of the peace, to the end that, through this prefectura, they may receive from the government the necessary license to enable them to settle in the establishment of Dolores, when they desire to form a settlement.

This project is of public utility, which will result beneficially to the inhabitants, and the government in all its branches will thereby be administered with better results.

All are now scattered, and this condition of society is not proper in the present age, in which civilization is one of the objects which particularly attracts the attention of the departmental government.

I send these views to your excellency, praying that you may be pleased to provide in favor of the inhabitants who petition through me, conceding them the solares they need in the said establishment, on which to build their houses.

I have the honor to protest the assurances of my regard.

163 JOSÉ CASTRO.

God and Liberty. Pueblo of San Juan de Castro, November 25th, 1839.

Marginal order of governor.

NOVEMBER 30, 1839.

1st. That the justice of the peace of San Francisco can grant solares for houses in the establishment of Dolores, of 50 varas square or less, according to the means of the petitioners.

2d. That those residents can place their stock on the lands surrounding the establishment and maintain them in community as settlers, leaving free the land of San Mateo and the coast; the first, because at the proper time the Indians will establish themselves there; and the second, because there is kept the only stock which it (the establishment) has.

3d They shall not embarrass in any respect the functions of the adm'r and the Indians, while this community.

III. Prefecturas and Juzgados Benicia—28.

The foregoing is a correct translation of the original.

R. C. HOPKINS.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

164 *Exhibit Hopkins E, annexed to dep. of R. C. Hopkins.*

Juzgado of 1st instance of San Francisco de Asis.

Don José Joaquin Estudillo has applied to me, asking permission to build a house on the beach of Yerba Buena, (anchorage of the vessels,) and there, also, he conceded to him sowing lands. Your excellency will inform me if it is within the faculties of this ayuntamiento to permit him to do so; as, also, to concede him lands for cultivation in that neighborhood.

God and liberty. San Francisco de Asis, July 15, 1835.

FRANCISCO DE HARO.

To the political chief of the Territory of Alta Cal'a:

MONTEREY, *Aug.* 4, 1835.

Let him be replied to, that it does not belong to the ayuntamiento to distribute lands for house-lots and for cultivation, in the place of Yerba Buena.

VI. Prefecturas and Juzgados Benicia—122.

The above is a correct translation of the original.

R. C. HOPKINS.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

165 *Exhibit Hopkins F, annexed to dep'n of R. C. Hopkins.*

Extracts from expediente of Bernal, in which he petitions for rancho of Salinas y Visitacion.

Petition to the superior political chief.

The citizen José Cornelio Bernal before your honor in due form of law respectfully represents: That having sufficient means to cultivate a tract of land which is situated in the neighborhood of San Francisco, for the advancement of the interests of his family, he petitions for this purpose the place named "Los Salinas y Visitacion," as the same is designated on the diseño which is herewith accompanied, that your honor may be pleased to cause the necessary proceeding to be taken to satisfy yourself that the same is vacant, and that although it pertains to the mission, it does not occupy the same.

Wherefore he prays your honor to be pleased to provide as prayed for, in which your petitioner will receive favor, swearing, &c.

Monterey, November 2, 1834.

At the request of the petitioner.

JOSÉ RAMON MALO.

166 *Decree of governor.*

MONTEREY, *Jan'y 2d*, 1835.

As it appears from the foregoing reports that the land petitioned for by José Cornelio Bernal is of the property of the pueblo of San Francisco de Asis, to which it serves for ejido for the stock of the community, his petition cannot be granted, since the same cannot be given in property, but the petitioner can keep his stock there, the same as the other inhabitants, or he may petition for another place that may be vacant; in which case his petition will be attended to, &c.

Expediente No. 2.

The foregoing is a correct translation of the original.

R. C. HOPKINS.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Certified copy of deed, S. J. Bridge to T. Dehon.

SAM'L J. BRIDGE
to
THEODORE DEHON.

This indenture, made the fourth day of February, in the year of our Lord one thousand eight hundred and fifty eight, between Samuel J. Bridge,

167 of the city and county of San Francisco, in the State of California, (now in the city of Washington, in the District of Columbia,) party of the first part, and Theodore Dehon, of the city and State of New York, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum one dollar, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these doth grant, bargain, sell, and convey, unto the said party of the second part, and to his heirs and assigns forever, all of his right, title, interest, estate, and claim, of, in and to those pieces or tracts of land, (in the mission de Dolores,) city and county of San Francisco, of the State of California, bounded and described as follows, to wit:

1st. To that lot of land commencing at a point on the southeast corner of Dolores street where it intersects with Tracy street; thence running westerly along the south line of the extension of Tracy street eighty chains; thence at right angles in a southerly direction, on a line parallel with
168 Dolores street, to a point where said line intersects with the northerly side of the extension of Corbett street; thence at right angles in an easterly direction along Corbett street to where it intersects with the southeast corner of Dolores street; thence at right angles in a northerly direction along the line of Dolores street to the place of beginning.

Also 2d. To that lot of land commencing at the southwest corner of Sparks and Dolores street; thence running westerly along the line of Sparks street 430 varas; thence southerly at right angles, 430 varas to the line of Corbett street; thence at right angles easterly along said Corbett street at 430 varas, more or less, to Dolores street; thence northerly along Dolores street, say 430 varas, to the place of beginning.

Also 3d. To that lot of land commencing at a point on the south side of Center street, 145 varas west of the southeast corner of Mission and Center street; thence running westerly fifty varas along Center street; thence at right angles southerly 200 varas; thence at right angles easterly 50 varas; thence at right angles northerly 200 varas to the place of beginning, being a portion of block No. forty.

Also 4th. To that lot of land commencing at a stake on the southwest corner of a survey made by W. P. Humphreys, in July, 1853, for one
169 Tho's H. Holt, on which the school fund warrants No. 445 and 458 were located for said Holt; running thence due north; thence at right angles due east; thence at right angles south; thence at right angles due west, to the place of beginning. Said tract of land forming a square and containing twenty acres, and which was quit-claimed by said Holt to T. M. J. Dehon, in 1853.

Also 5th. To that lot of land which was sold to me in June, 1857, by sheriff D. Scannell, of San Francisco, of the county of San Francisco, California, under foreclosure of mortgages given by said Dehon, one to E. D. Luning, and two mortgages to W. B. Johnston, and by them transferred to me.

Also 6th. To that lot of land commencing at a point on the west side of Guerrero street, 20 varas, south of the south line of Sparks street; thence running northerly along the west line of Guerrero street, 50 varas; thence at right angles westerly, sixty varas; thence at right angles southerly, 50 varas; thence at right angles easterly, sixty varas.

7th. And finally to all lands and premises in the said county of San Francisco heretofore claimed as belonging to T. M. J. Dehon, and which may have been sold or deeded to me by W. T. Reynolds, assignee of said
170 Dehon, or sold to me by the said sheriff Scannell, or the said T. M. J. Dehon, or by C. V. Stuart.

It is expressly understood and covenanted that this deed does not contain or enter into any warrantee or guarantee whatever, as to the lands and premises herein conveyed, either expressed or implied, and that it serves and is intended simply and solely to transfer such right, title, and interest, as I have to the same, but is in no way to create or impose any liability upon me:

Together with all and singular the tenements, hereditaments, and appurtenances hereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in, or to the above described premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said party of the first ha hereunto set his
171 hand and seal, the day and year first above written.

SAM'L J. BRIDGE. [SEAL.]

Signed, sealed and delivered in presence of—
N. CALLAN.
FRED. CALLAN.

DISTRICT OF COLUMBIA,
Washington County.

On this fourth day of February, in the year eighteen hundred and fifty-eight, personally appeared before me, Nicholas Callan, a commissioner, duly appointed by the Governor of California for the city of Washington, Samuel J. Bridge, known to me to be the person named in and who executed the foregoing instrument, and he, the said Samuel J. Bridge, acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

[SEAL.]

N. CALLAN,
Commissioner for California.

A true copy of an original recorded at request of M. Lynch, August 19, 1858, at 50 min. past 4 p. m.

G. W. BECKH, *County Recorder.*

172 *Certified copy of deed, C. S. de Bernal et al. to H. W. Halleck et al.*

I, Thomas Young, county recorder in and for the city and county of San Francisco, do hereby certify that the foregoing is a full, true, and correct copy of an original record now in my office, as will appear by reference to liber 81 of deeds, page 287.

Witness my hand and official seal, this twelfth day of August, A. D. 1862.

[SEAL] T. YOUNG, *County Recorder.*

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

CARMEN SIBRIAN DE BERNAL *et al.*
to
HENRY W. HALLECK *et al.*

This indenture, made the twenty-first day of April, in the year of our Lord one thousand eight hundred and fifty-six, between Carmen Sibrian de Bernal

and José Jesus de Bernal, of the county of San Francisco, State of California, parties of the first part, and Henry W. Halleck, Archibald C. Peachy,
173 and Frederick Billings, of said San Francisco, parties of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said parties of the second part, and to their heirs and assigns forever, one undivided half of the piece or parcel of land lying and situate in the said county of San Francisco, and described as follows, to wit:

A solar or lot of land two hundred varas square, in a square form, near the mission of Dolores, and to the northwest of the establishment or buildings of said mission, bounded on the north by an arroyo; the northeast corner of said lot being about 150 varas, more or less, in a northwest direction from the northeast corner of *of* the said mission establishment, and the southeast corner of said lot about 60 varas, more or less, from the northwest
174 corner of said mission establishment, being the same solar or lot of land granted to José Cornelio Bernal by José Figueroa, governor of California, in the year 1834, the claim for which is filed before the United States board of land commissioners, is numbered 671, which said claim has been confirmed by said board of land commissioners, and also by the U. S. district court; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, promise and agree, to and with the said parties of the second part, their heirs and assigns, that they
175 have not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CARMEN SIBRIAN DE BERNAL. [SEAL.]
JOSÉ DE JESUS BERNAL. [SEAL.]

Signed, sealed and delivered in presence of—
ROBT. C. ROGERS.

STATE OF CALIFORNIA, *County of San Francisco, ss:*

On this 21st day of April, A. D. one thousand eight hundred and fifty-six, before me, a notary public in and for said county, personally appeared Carmen S. Bernal and José Jesus Bernal, known to be the individuals described in and who executed the foregoing conveyance, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

176 In witness whereof I have hereunto set my hand and affixed my official seal, the day and year first above mentioned.

[SEAL.] ROB'T C. ROGERS, *Notary Public.*

A true copy of the original, recorded at the request of H. P. and Billings April 22d, 1856, at 12½ p. m.

F. D. KOHLER, *County Recorder.*
By GEO. F. KOHLER, *Deputy.*

61 of deeds, page 234.

STATE OF CALIFORNIA, *City and County of San Francisco, ss:*

I, Thomas Young, county recorder, in and for the city and county of San Francisco, do hereby certify that the annexed is a full, true, and correct copy of an original record, as will appear by reference to book 61 of deeds, page 234, now in my office.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed my official seal, this fifth day of March, A. D. 1863.

T. YOUNG, *County Recorder.*

[Int. Revenue Stamp.]

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

177 In the district court of the twelfth judicial district.

Certified copy of decree in case of Bridge vs. *Dehon et al.*

SAMUEL J. BRIDGE, plaintiff.
vs.
T. M. J. DEHON, WM. T. REYNOLDS, assignee of said Dehon, an insolvent, John Perry, jr., James Riley, Thomas H. Holt, T. S. Burnstead, A. B. Sale, B. Bernard, A. Eger, L. Cerf, J. Wolfe, S. H. Pendester, James E. Smith, H. A. Cobb, Otis V. Sawyer, E. P. Flint, assignee of Otis V. Sawyer, an insolvent, James Doyle, Wm. T. Reynolds, H. F. W. Hoffman, J. C. Carmen, M. Lynch, Thos. Nolan, Thos. Kiernan, J. Morris, M. Hiland, James A. Dorr, Samuel Shelton, Wm. B. Swain, A. T. Moses, W. W. Beggs, N. F. Cutter, James Graves, Francisco, Francisco Buffino, Joseph Allemain, archbishop of the arch diocese of California, W. W. Backus, Theodore Dehon, Willis Bond, H. D. Bacon, David Chambers, Henry Haight, D. D. Page, and F. W. Page, defendants.

178 This action having been brought on to be heard on the amended complaint filed herein, and on the answer of W. W. Beggs, one of the defendants above named, and it appearing to the satisfaction of the court that a copy of the summons and said complaint was duly served on the following named defendants, to wit, T. M. J. Dehon, Theodore Dehon, W. W. Beggs, S. H. Pendexter, James A. Dorr, H. D. Bacon, and D. D. Page, and that said T. M. J. Dehon and W. W. Beggs were personally so served; and it further appearing that the following named defendants, living within three miles of the county clerk's office of San Francisco, were likewise personally served with a copy of the summons in this case, to wit, John Perry, jr., A. B. Sale, B. Bernard, A. Eger, L. Cerf, J. Wolfe, J. E. Smith, H. A. Cobb, Otis V. Sawyer, E. P. Flint, assignee of Otis V. Sawyer, James Doyle, Wm. T. Reynolds, assignee of T. M. J. Dehon, H. F. W. Hoffman, M. Lynch, Thos. Kiernan, J. Morris, M. Hiland, A. T. Moses, James Graves, Francisco Ruffino, W. B. Swain, Jo-

seph Allemain, archbishop of the arch diocese of California, Willis Bond, David Chambers, Henry Haight, and F W. Page; and it further appearing that James Riley, Thomas H. Holt, T. S. Barnsted, J. C. Carmen, T.
179 Nolan, S. Shelton, H. F. Cutter, W. W. Backus, were non-residents of the State, or could not be found therein, were served by publication of the summons in this cause by order of this court, as required by statute; and it further appearing that no answer to the complaint in this action having been put in by the defendants above named, except by the said W. W. Beggs, and the legal delay for said defendants to answer having expired; and it further appearing that there is due on the first described mortgage in the amended complaint, given to secure payment of the note for $550, and interest, to Ellen D. Luning, (endorsed to S. J. Bridge,) the sum of $2,049 66, on the 13th July, 1856, together with interest at ten per cent. per month from that date, and costs; and that there is also due on the last and third described mortgage in said complaint given to secure payment of one of the notes for $1,250, and interest, to W. F. Babcock and Co., (endorsed to S. J. Bridge,) the sum of $2,395 84 on the 13th July, 1856, together with interest at five per cent. per month from that date, and costs, making in all the sum of $4,445 50, with costs, taxed at $335, and accruing interest from 13th July, 1856, to be added thereto:

It is ordered, adjudged, and decreed, that the mortgaged premises
180 as hereinafter firstly described and firstly referred to in the amended complaint, and as hereinafter secondly described and lastly referred to in said complaint, or so much thereof as may be necessary, and as may be sold separate without prejudice to the interest of the owner thereof, be sold at public auction in the county of San Francisco by the sheriff of said county; that the sheriff give notice of such sale according to law and the practice of this court, giving the boundaries of the land, as hereinafter pointed out, that either, or any of the parties to this action, may purchase at said sale; that the said sheriff execute to the said purchaser, or purchasers, a certificate of sale of the two-thirds of the premises sold; that out of the moneys arising from such sales, after deducting the amount of his fees and expenses and the same, the said sheriff shall pay to the said plaintiff, or his attorney, the sum of $335, adjudged to the plaintiff for costs and charges in this action, and also the sum of $4,445 50 due, as aforesaid, together with interest from 13th July, 1856, or so much thereof as the proceeds of the mortgaged premises will pay of the same, and that he bring the surplus money, if any there be, arising from said sale, into court without delay, to abide the further order of this court; that he make a report of such
181 sale, and file it with the clerk of this court with all convenient despatch. That if the proceeds of such sale shall be insufficient to pay the amount so due the plaintiff, with interests and costs added as aforesaid, that the said sheriff specify the amount of said insufficiency in his report of the sale; and for such insufficiency, that the plaintiff have execution against the said defendant, T. M. J. Dehon, and against Wm. T. Reynolds, the assignee of said Dehon.

It is further ordered, adjudged, and decreed that the defendant, W. W. Beggs, shall have the right, within the time fixed by law, after the sale of said property, to redeem either or both of the two mortgages (at his option) covering the two undivided thirds of the property to which the mortgages held by him respectively apply, and in which he appears as defendant, by paying into the proper hands, in case he should decide to redeem only one of said plaintiff's mortgages, the amount justly and legally due on the foreclosure and judgment of the same, together with costs and accruing interest up to the time he may effect said redemption. And in case the defendant, W. W. Beggs, should elect to redeem two of said plaintiff's mortgages,

182 (to wit, that on the first third, and that on the last third of the property, as set forth in the amended complaint,) then he shall pay to accomplish said redemption, the full amount justly and legally due on said two mortgages at the time of redemption, according to the terms thereof, and the judgment rendered by this court, and with costs and accruing interest.

It is further ordered, adjudged, and decreed, that the said first and last named mortgages set forth in the amended complaint be foreclosed, and that the defendants and all persons claiming under them, or any or either of them, shall be forever barred and foreclosed of all right, claim, lien, or equity of a redemption in the said mortgaged premises, or any part thereof.

Said mortgaged premises are bounded and described as follows, to wit: Commencing at a point on the west line of Dolores street, bearing from northeast corner of Centre and Dolores street S. 74° 50′ W. 120 feet; thence northerly along said line of street 2 chains 65 links; thence S. 81° 50′ west 2 chains 57 links; thence at right angles northerly 3 chains 25 links; thence S. 86° 20′ west, 1 chain 20 links; thence N. 73° 40′ W., 2 chains 26
183 links; thence N. 67° 10′ W., 2 chains 22 links; thence N. 53° 40′ W., 1 chain 16 links; thence N. 38° 20′ W., 1 chain 33 links; thence N. 40° 35′ W., 2 chains 63 links; thence N. 41° 45′ W., 1 chain 64 links; thence N. 88° 40′ W., 2 chains 20 links; thence N. 74° 25′ W., 1 chain 64 links; thence S. 83° 22′ W., 6 chains 10 links; thence N. 60° 10′ W., 23 chains 33½ links; thence N. 84° 30′ W., 23 chains 33 links; thence S. 2° E., 29 ch's 88 links; thence S. 65° 45′ E., 14 chains 14 links; thence S. 68° 40′ E., 2 chains 54 links; thence S. 85° 25′ E., 14 ch's 53 links; thence N. 79° 20′ E., 16 chains 15 links; thence N. 77° 55′ E., 11 chains 64 links; thence N. 3° 25′ W., 3 chains; thence N. 80° 3′ E., 5 chains 52 links; thence N. 7° 10′ W., 1 ch. 39 links; thence at right angles and on a line with the south wall of the old adobe building known as the Bull's Head, (sometimes called the north wing of the old mission Dolores church block,) 2 ch's 33 links, to a point on the west line of Dolores street, being the place of beginning, and containing 160 acres of land, more or less.

The liens hereby foreclosed on said tract of land are—

Mortgage held by S. J. Bridge, firstly alluded to in amended complaint, to wit: That undivided one-third of the lands and premises particularly described in the survey set forth in the amended complaint, (the bound-
184 aries of which are just above recited,) and which one-third was purchased by T. M. J. Dehon of A. T. Moses and wife, on the 20th September, 1851, and the first mortgage resting on which was given by said Dehon to Ellen D. Lunning on the 22d November, 1852; also,

Mortgage held by S. J. Bridge, thirdly and lastly referred to in amended complaint, to wit: That undivided one-third of the lands and premises above described, and which one-third was purchased of A. T. Moses and wife by T. M. J. Dehon on the 28 July, 1853; and the first mortgage on which one-third was given by said Dehon to W. B. Johnson on the 30th July, 1853. Said deed from Moses and wife to Dehon being recorded Aug't 1, '53, at 10¼ a. m.

Endorsed: Filed July 12, '56.

HAYES, *Clerk.*

I hereby certify the foregoing to be a full, true, and correct copy of the original decree made and entered in the within entitled cause.

Attest my hand, &c., this March 25, 1863.

[SEAL.] WASHINGTON BARTLETT, *Clerk.*
By JNO. HANNA, *D. C.*

[Int. Revenue Stamp.]

185 Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Certified copy of petition of C. L. de Bernal in case No. 682, *Land Commission.*

To the honorable board of commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Carmen Sibria de Bernal, widow of José Cornelio Bernal, of the county of San Francisco, in the State of California, respectfully represent to your honorable board that she claims a certain tract of land of two hundred varas in square situated in the mission of Dolores de San Francisco, in the county of San Francisco, to the northwest of the church and the other principal buildings of said mission, distant about four hundred yards, borded to the south and southeast by the mission lands, to the west by the lands of Mr. Guerero, and to north and northeast by the mission stream. That your solicitress claim the same in fee, by virtue of a grant made to her deceased husband, said José Cornelio Bernal, under the authority of the Mexican government, by Dn. José Figueroa, governor of the territory of High California, bearing date of 1833, and granted with the con-
186 sent of Rev'd Fathers missionaries, who at that time were indebted to her husband, the aforementioned José Cornelio Bernal, for his services as mayordomo (steward) of said mission. Your petitioner further represent that since the above mentioned grant the Rev. Fs. missionaries, in payment of part of the above mentioned debt, caused a house to be erected upon the above mentioned land, the remains of which are still existing upon said land. Your petitioner further represent that she has lost the title of said grant, which was taken away or destroyed by some person or persons who, at the time when the American forces took possession of the country, entered their house whilst she, your petitioner, and her deceased husband were absent; and that the greatest part of the records of said mission having been also lost or destroyed, she has in vain asked for a copy of said title.

Your petitioner would further respectfully represent that possession of said land was given to her husband, the aforementioned José Cornelio Bernal, and the boundaries thereof designated, all which she will prove by witnesses, if required by your honorable board.

Your petitioner pray your honorable board to take her claim unto said tract of land into consideration, decree that it is valid, and confirm the
187 grant thereof.

And your petitioner will ever pray.

The agent of Carmen Sibrian de Bernal,

T. H. MORENHAUT.

San Francisco, the 28th Feb'y, 1853.

Endorsed: N., 682. U. S. land commission. Carmen Sibrian de Bernal, widow, etc. 200 varas square at mission Dolores. Petition. Filed in office March 1st, 1853. Geo. Fisher, sec'y. Recorded in vol. 2 of petitions, on pages 62, 63.

GEO. FISHER, *Sec'y.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages, num-

bered from one to three inclusive, exhibit a true, full, and correct copy
188 of the petition of Carmen Sibrian de Bernal, widow, to the board of commissioners, together with the endorsements thereon, as the same appears on file on the docket of said board of commissioners in case No. 682.

In testimony whereof I have hereunto signed my name officially, and
[SEAL] caused my seal of office to be affixed at the city of San Francisco, this 22d day of Aug., 1862.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Deed D.—Scannell, sheriff, to S. J. Bridge.

This indenture, made and executed this 25th day of March, A. D. 1858, by David Scannell, late sheriff of the county of San Francisco, in the State of California, witnesseth: That whereas in and by a certain order of sale issued out of the district court of the 12th judicial district of the said State of California, in the action of Samuel J. Bridge against T. M. J. Dehon,
189 Wm. T. Reynolds, assignee of said Dehon, an insolvent, John Perry, jr, James Riley, Thomas H. Holt, T. S. Barnstead, A. B. Gale, B. Bernard, A. Eger, Z. Cerf, J. Wolf, S. H. Pendexter, Jos. E. Smith, H. A. Cobb, Otis V. Sawyer, E. P. Flint, assignee of Otis V. Sawyer, an insolvent, James Doyle, Wm. T. Reynolds, H. F. W. Hoffman, J. C. Carman, M. Lynch, Thos. Nolan, Thos. Kiernan, J. Morris, M. Hiland, James H. Dorr, Samuel Shelton, Wm. B. Swain, A. T. Mores, W. W. Beggs, H. F. Cutter, James Graves, Francisco Ruffino, Joseph Allemain, archbishop of the arch diocese of California, W. W. Backus, Theodore Dehon, Willis Bond, H. D. Bacon, David Chambers, Henry Haight, D. D. Page, and F. W. Page, duly attested the 23d of May, A. D. 1857, and to me as such sheriff duly directed and delivered, I was commanded to sell the property hereinafter described at public auction, according to law, and to apply the proceeds of such sale towards the satisfaction of the judgment in said action, amounting to the sum of ($4,445 50) four thousand four hundred and forty-five $\frac{50}{100}$ dollars, and the interest thereon, and costs of suit and expenses of sale, as by the said order of sale, reference being thereunto had, more fully appears:

And whereas, in pursuance of said order of sale, I did duly levy on, and on the 23d day of June, 1857, at 12 o'clock noon, at the court-house doors,
190 in the city of San Francisco, in said State, I did duly sell the premises hereinafter described, at public auction, according to law, to the plaintiff, Samuel J. Bridge, who was the highest bidder therefor, for the sum of one ($1,000 00) thousand dollars, which was the whole price paid by him for the same—I having first given due notice of said sale by publication of the said time and place thereof, and of the description of the said property hereinafter set forth, once in each week, for twenty-one days, in the Sun, a daily newspaper, published in said county, and by posting copies of such notice and description daily for the same period in three public places of said city of San Francisco; and whereas, after receiving from said purchaser the said sum of money so bid as aforesaid, I gave to him, said purchaser, such certificate as is by law directed to be given, and a duplicate whereof was duly filed in the office of the recorder of said county; and whereas the time allowed by law for the redemption of said property has expired, without any such redemption having been made:

Now, therefore, I, the said David Scannell, late sheriff of the said county of San Francisco, in pursuance of the said order of sale, and of the statute in such case made and provided for, and in consideration of the payment to me

191 of the said sum of one thousand ($1,000 00) dollars, so bid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said Samuel J. Bridge, his heirs and assigns, the real estate in said order of sale, described as follows, to wit: The undivided two-thirds of the following property, to wit: Commencing at a point on the west line of Dolores street, bearing from the northeast corner of Centre and Dolores streets, south 74° 50′ west, 120 feet; thence northerly along said line of street, 2 chains 65 links; thence south 81° 50′ west, 2 chains 57 links; thence, at right angles, northerly 3 chains 25 links; thence south 86° 20′ west, 4 chains 20 links; thence north 73° 40′ west, 2 chains 26 links; thence north 67° 10′ west, 2 chains 22 links; thence north 53° 40′ west, 1 chain 16 links; thence north 38° 20′ west, 1 chain 33 links; thence north 40° 35′ west, 2 chains 63 links; thence north 41° 45′ west, 1 chain 64 links; thence north 88° 40′ west, 2 chains 20 links; thence north 74° 25′ west, 1 chain 64 links; thence south 83° 2′ west, 6 chains 10 links; thence north 60° 10′ west, 23 chains 33⅓ links; thence north 84° 30′ west, 23 chains 33 links; thence south 2° east, 29 chains 88 links; 65° 45′ east, 14 chains 14 links; thence south 68° 40′ east, 2 chains 54 links; thence south 85° 25′ east, 14 chains 53 links; thence north 79° 20′ east, 16 chains 15 links; thence north 77° 55′ east, 11 chains 64 links; thence north 30° 25′
192 west, 3 chains; thence north 80° 3′ east, 5 chains 52 links; thence north 70° 10′ west, 1 chain 39 links; thence at right angles and on a line with the south wall of the old adobe building known as the Bull's Head, (sometimes called the north wing of the old mission Dolores church block,) 2 chains 33 links to a point on the west line of Dolores street, being the place of beginning, and containing 160 acres of land, more or less; excepting the undivided two-thirds of the following piece or parcel of land, that lot 45 feet 2 inches x 172 feet deep, recorded in the county recorder's office of San Francisco, as sold to F. Ruffino, in liber 28 of deeds, folio 212; also those lots, 29 x 90 feet each, sold to Sawyer and others, as per liber 38 of deeds, folios 103, 384, and 611; also two lots sold T. Doyle, and two of the lots sold Reynolds, (now claimed by Hoffman,) all 28 x 90 feet each, as per liber 39 of deeds, folios 136 and 519, for description of which reference is made to said recorded deeds; excepting all that undivided two-thirds of the following described premises, to wit: Commencing at a point 119 feet 6 in. south of the south line of the boundary of the 100 vara lot, claim of the Hood estate, where
193 said line intersects the west line of Dolores street; thence running westerly on said line parallel with the south wall of the north wing of the mission Dolores adobe buildings 196 feet; thence northerly and parallel with the west wall of said wing 59 feet; thence S 82°. W. $4\frac{94}{100}$ chains; thence S. 4° 15′ E. $5\frac{26}{100}$ chains; thence N. 78° 15′ E. $7\frac{92}{100}$ chains to Dolores street; thence northerly along Dolores street to the place or point of beginning:

To have and to hold the same unto the said Samuel J. Bridge, his heirs and assigns, forever.

In witness whereof, I, the said late sheriff, have hereunto set my hand and affixed my seal, the day and year first above written.

DAVID SCANNELL, [SEAL.]
Late Sheriff of San Francisco County.

Signed, sealed, and delivered in presence of—the word north interlined on 35 line, 2 page, before signing; the word sell interlined on 29 line, 1st page—

THOS. H. FLANAGAN.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this eighth day of April, A. D. one thousand eight hundred and
194 fifty-eight, before me, Preston K. Woodside, a notary public in and for said city and county, personally appeared Thomas H. Flanagan, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in the city and county aforesaid; that he was present and saw David Scannell, late sheriff of said county, known to him to be the same person described in and who executed the annexed instrument as a party thereto, sign, seal, and deliver the same; and that the said David Scannell, late sheriff, acknowledged, in the presence of deponent, that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned and in the capacity therein named; and that he, the deponent, thereupon signed his name as a subscribing witness thereto.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

P. K. WOODSIDE,
Notary Public.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Recorded in the office of the county recorder of the city and county of San Francisco, July 11th, 1859, at 23 min. past 12 o'cl'k m., in liber 95 of deeds, page 32.

G. W. BECKH,
County Recorder.

195 *Deed—Scannell, sheriff, to S. J. Bridge.*

This indenture, made and executed this 29th day of March, A. D. 1858, by David Scannell, late sheriff, of the county of San Francisco, witnesseth: That whereas, in and by a certain order of sale issued out of the district court, of the 12th judicial district of the said State of California, in the action of Samuel J. Bridge against T. M. J. Dehon, Wm. T. Reynolds, assignee of said Dehon, an insolvent, John Perry, jr., James Riley, Thomas H. Holt, T. S. Barnstead, A. B. Gale, B. Bernard, A. Eger, Z. Cerf, J. Woolf, S. H. Pendexter, Jas. E. Smith, H. A. Cobb, Otis V. Sawyer, E. P. Flint, assignee of Otis V. Sawyer, an insolvent, James Doyle, Wm. T. Reynolds, H. F. W. Hoffman, J. C. Carmen, M. Lynch, Thos. Nolan, Thos. Kiernan, J. Morris, M. Hiland, James A. Door, Samuel Shelton, Wm. B. Swain, A. T. Moses, W. W. Beggs, H. F. Cutter, James Graves, Francisco Ruffino, Joseph Allemain, archbishop of the arch diocese of California, W. W. Backus, Theodore Dehon, Willis Bond, H. D. Bacon, David Chambers, Henry Haight, D. D. Page, and F. W. Page, duly attested the 23d day of May, 1857, and to me as such sheriff duly directed and delivered, I was commanded to sell the property hereinafter described, at public auction, according to law, and to apply the proceeds of such sale towards the satisfaction of the judgment in this
196 action, amounting to the sum of ($2,812 50) two thousand eight hundred and twelve $\frac{00}{100}$ dollars, and the interest thereon, and costs of suit and expenses of sale, as by the said order of sale, reference being thereunto had, more fully appears: And whereas, in pursuance of said order of sale, I did duly levy on, and on the 23d day of June, A. D. 1857, at 12 o'clock noon, at the court-house doors, in the city of San Francisco, in said State, I did duly sell the premises hereinafter described, at public auction, according to law, to the plaintiff, Samuel J. Bridge, who was the highest bidder

therefor, for the sum of (500 00) five hundred dollars, which was the whole price paid by him for the same, I having first given due notice of the said sale by publication of the said time and place thereof, and of the description of said property hereinafter set forth, once in each week, for twenty-one days, in the Sun, a daily newspaper published in said county, and by posting copies of such notice and description, daily, for the same period, in three public places of the said city of San Francisco: And whereas, after receiving from said purchaser the said sum of money so bid as aforesaid, I gave to him, said purchaser, such certificate as is by law directed to be
197 given, and a duplicate whereof was duly filed in the office of the recorder of said county: And whereas the time allowed by law for the redemption of said property has expired, without any such redemption having been made:

Now, therefore, I, the said David Scannell, late sheriff of the said county of San Francisco, in pursuance of the said order of sale, and of the statute in such case made and provided, for and in consideration of the payment to me of the said sum of (500 00) five hundred dollars, so bid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said Samuel J. Bridge, his heirs and assigns, the said real estate in said order of sale described as follows, to wit, the undivided one-third of the following described property, to wit: Commencing at a point on the west line of Dolores street, bearing from the northeast corner of Centre and Dolores street, south 74° 50′ west, 120 feet; thence northerly along said line of street, 2 chains 65 links; thence south 81° 50′ west, 2 chains 57 links; thence at right angles northerly, 3 chains 25 links; thence south 86° 20′ west, 1 chain 20 links; thence north 73° 40′ west, 2 chains 26 links; thence north 67° 10′ west, 2 chains 32 links; thence north 53° 40′ west, 1 chain 16 links; thence north 38° 20′ west, 1 chain 33
198 links; thence north 40° 35′ west, 2 chains 63 links; thence north 41° 45′ west, 1 chain 64 links; thence north 88° 40′ west, 2 chains 20 links; thence north 74° 25′ west, 1 chain 64 links; thence south 83° 02′ west, 6 chains 10 links; thence north 60° 10′ west, 23 chains 33⅓ links; thence north 84° 30′ west, 23 chains 33 links; thence south 2° east, 29 chains 88 links; thence south 65° 45′ east, 14 chains 14 links; thence south 68° 40′ east, 2 chains 54 links; thence south 85° 25′ east, 14 chains 53 links; thence north 79° 20′ east, 16 chains 15 links; thence north 77° 55′ east, 11 chains 64 links; thence north 3° 25′ west, 3 chains; thence north 80° 3′ east, 5 chains 52 links; thence north 7° 10′ west, 1 chain 39 links; thence at right angles and on a line with the south wall of the old adobe building known as the "Bull's Head," (sometimes called the north wing of the old mission Dolores church block,) 2 chains 33 links, to a point on the west line of Dolores street, being the place of beginning, and containing 160 acres of land, more or less, excepting the undivided one-third of the following described property, to wit: That lot 45 feet 2 in. × 172 feet deep, recorded in the county recorder's office of San Francisco as sold to F. Ruffino, in liber 28 of deeds, folio 212; also those lots 28 × 90 feet each, sold to
199 Sawyer and others, as per liber 38 of deeds, folios 103, 384, 611; also two lots sold J. Doyle, and two of the lots sold Reynolds, now claimed by Hoffman, all 28 × 90 feet each, as per liber 39 of deeds, folios 136 and 519, for description of which reference is made to said recorded deeds: to have and to hold the same unto the said Samuel J. Bridge, his heirs and assigns, forever.

In witness whereof, I, the said late sheriff, have hereunto set my hand and affixed my seal the day and year first above written.

DAVID SCANNELL, [SEAL.]
Late Sheriff of San Francisco County.

Signed, sealed and delivered in presence of (the word "excepting" interlined before signing, on 20 line, 3d page)—
THOS. H. FLANAGAN.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this eighth day of April, A. D. one thousand eight hundred and fifty-eight, before me, Preston K. Woodside, a notary public, in and for said city and county, personally appeared Thomas H. Flanagan, personally known to me to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposed and said, that he resides in the city and county aforesaid; that he was present and saw David Scannell, late sheriff of said county, known to him to be
200 the same person described in and who executed the annexed instrument as a party thereto, sign, seal and deliver the same; and that the said David Scannell, late sheriff, acknowledged, in the presence of deponent, that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that he and in the capacity herein named, the deponent, thereupon signed his name as a subscribing witness thereto.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.] P. K. WOODSIDE,
Notary Public.

Recorded in the office of the county recorder of the city and county of San Francisco, July 11th, 1859, at 22 min. past 12 o'cl'k m. in liber 95 of deeds, page 29.

G. W. BECKH,
County Recorder.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Stipulation.

And a tract bounded and described as follows, to wit: Beginning at a stake marked with a cross, (being corner No. 1,) at the southeast corner of the cemetery, adjoining the church of the mission Dolores, on the west side of Dolores street, (and which station is south seventy-eight degrees
201 west, distant eighty-two links, from a point on the east side of said street, which is north five degrees west, four chains and four links from the southwest corner of the survey of the old garden of the mission, east of said church;) thence according to the true meridian, (the variation of the magnetic needle being fifteen degrees thirty minutes east,) along a stone wall surmounted by a wooden fence, on the south line of the cemetery, south seventy eight degrees west, seven chains and ninety-eight links, to stake marked "C. C. No. 2," and which stake is south eighty-four degrees thirty-five minutes east, one hundred and forty-eight chains and eighty-seven links from the corner to sections 7, 12, 13, 18 on the west boundary of township number two south, range five west; thence north four degrees west, crossing the fence and following the remains of an old stone wall, six chains and twenty-six links, to a stake marked "C. C. No. 3;" thence north eighty-one degrees east, along the north line of the tract as enclosed and claimed by the mission priests, five chains and fourteen links, to a stake marked "C C. No. 4;" thence south four degrees east, sixty-nine links, to stake marked "C. C. No. 5," at corner of enclosure; thence north eighty-one

202 degrees east, two chains and sixty-one links, to stake marked "C. C. No. 6;" and thence south five degrees thirty minutes east, five chains and seven links, to the place of beginning; containing four acres and fifty-one hundredths of an acre, embracing the church and mission buildings of the mission of San Francisco, commonly called the mission Dolores, and the "cemetery" and "garden," adjoining the same, and being designated upon the plat of the public surveys as being lot numbered forty, in township numbered two south, of range numbered five west of the Mount Diablo meridian.

I certify that the foregoing is a true description, taken from the patent issued by the United States to Joseph S. Allemany.

D. BIXLER.

UNITED STATES
vs.
C. S. DE BERNAL *et al.* } No. 165.

It is admitted that the above-described lands are embraced in a patent from the United States to Joseph S. Alemany, archbishop of the Catholic church for the diocese of California, which patent issued upon a final
203 decree of confirmation in the case of the United States *vs.* Joseph S. Alemany, in this court.

San Francisco, 25 March, 1863.

JNO. B. WILLIAMS,
Att'y for Cl'm't.
J. B. CROCKETT,
Att'y for Intervenor.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Stipulation admitting certain testimony.

U. S. district court.

THE UNITED STATES
v.
C. S. DE BERNAL *et al.* } No. 165.

It is hereby stipulated and agreed that the original papers, copies of which are on file in the following cases, to wit: No. 427, U. S. *vs.* City San Francisco; 131, U. S. *vs.* Josefa Palomeras *et al.*; 5, U. S. *v.* C. S. de Bernal *et al*; 425, U. S. *v.* J. S. Alemany, may be used as evidence herein, so far as applicable, with the same force and effect as if regularly proved in this
204 case, subject to all objections as to relevancy.

SAN FRANCISCO, *March* 27, 1863.

JNO. B. WILLIAMS,
Att'y for Claimants.
J. B. CROCKETT,
Att'y for Intervenor.

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

Civil government of Upper California.

With this date I say to the commissioner of San Solans the following: "If Senor Don Jose Marias Hijar, or any individuals of the colony, should decide to remove to another part of the land in order to establish themselves, you will furnish them with the necessary assistance to pass the bay, and to transport them with their baggage, reporting to me the persons who may do so, and their place of destination, for my government." And I transmit it to you for the same purpose in case it should be needed, that its provisions may be complied with.

God and liberty. San Francisco, March 5th, 1835.

(S'g'd) JOSE FIGUEROA.

205 To the Senor Commissioner of San Francisco de Asis:

Stamp fourth. One cuartilla. Provisionally authorized by the administration of the maritime custom-house of Monterey of Upper California, for the years 1834 and 1835.

(S'g'd) CASTRO.
(S'g'd) ANGEL RAMIREZ.

Revalidated for the two years 1836 and 1837.

(S'g'd) GUTIERREZ.
(S'g'd) A. RAMIREZ.

Senor commanding general and governor of the Territory of Upper California:

I, Francisco Guerrero, a Mexican by birth, before your excellency make representation that being a member of the colony which came to this Territory, and that as his excellency the commanding general, Don Jose Figueroa, directed that we should settle wherever we might think proper, I pray your ministration, in the use of your powers, to grant me four hundred square varas in a marshy place which forms a plain N.NW. of the mission
206 from the place where the water springs from the north to south, east and west, to the road to Yerba Buena, according to the map which I transmit, for I will receive this favor from your excellency to make use of said land for my benefit.

Wherefore I earnestly pray your excellency to grant that which I request, by which I will receive favor and grace, swearing what may be necessary, &c.

San Francisco, Oct. 28, 1836.

(S'g'd) FRANCISCO GUERRERO.

MONTEREY, *Nov.* 4, 1836.

Let the administrator of the mission of San Francisco report whether the land is vacant and can be granted to the petitioner.

(S'g'd) GUTIERREZ.

DOLORES, 9 *of Nov.*, 1836.

In compliance with the superior decree, I will say that the land is vacant, and in conformity with the order of the deceased General Figueroa it may be granted to the person interested.

(S'g'd) GUM'DO FLORES.

MONTEREY, *Nov. 30th*, 1836.

Having previously seen the report of the administrator of the mission of Dolores, and the superior order relative to the individuals of the colony, there are granted to citizen Francisco Guerrero four hundred varas in the place petitioned for according to the present petition; he will therefore present this document to the government of the Territory so soon as the missions are regulated, that the present decree may be respected.

(Sig'd) NICOLAS GUTIERREZ.

I certify the foregoing to be a true and correct translation from the Spanish document on file in this office in case No. 229, Francisco Guerrero, annexed to the deposition of Gumeando Flores.

GEO. FISHER, *Sec'y.*

Filed in office May 15th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

(Here follows diseño, or map, page 207.)

207 First stamp. Six dollars.

Provisionally authorized by the maritime custom-house of Monterey for the years 1839 and 1840.

(Signed) ALVARADO.

(Signed) ANTONIO MARIA OSIO.

{Maritime Custom-House of Monterey.}

Manuel Jimeno Caserin, first member of the most excellent assembly of th department of the Californias, in charge of the government of the same.

Whereas Don Jose Cornelio Bernal has for his own personal benefit, and that of his family, asked for the place called "Rincon de las Salinas," and "Potrero Viejo," bounded by the mission of San Francisco, by the land of "La Visitacion," and the sea, the proper proceedings and examinations having previously been taken, as directed by the laws and regulations, using the powers which are conferred on me in the name of the Mexican nation, I have granted him the said land declaring to him the ownership of it by these present letters, subject to the approbation of the most excellent departmental assembly, and the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes; he may enjoy it freely and exclusively, making such use
208 and cultivation of it as he may see fit; but within one year he shall build a house, and it shall be inhabited.

2d. He shall ask the respective magistrate to give him juridical possession in virtue of this dispatch, by whom the boundaries shall be marked out, and in their bounds he shall plant, besides the landmarks, some fruit or useful forest trees.

3d. The land referred to is one "sitio de ganado mayor," (one square league,) a little more or less, as the map which goes with the record of proceedings (espediente) explains. The magistrate who may give the possession will have it measured conformably to ordinance, leaving the overplus which may result to the nation for its convenient uses.

4th. If he should contravene these conditions, he will lose his right to the land, and it will be denounceable by another.

In consequence, I order that this title being held as firm and valid shall be entered (note be taken of it) in the corresponding book, and it be delivered to the party interested for his security and further ends.

Given in Monterey the tenth day of October, one thousand eight hundred and thirty-nine.

209 (Signed) MANUEL JIMENO.
(Signed) FRANCISCO C. ARCE, *Ch'f Clk.*

This patent has been entered in the book of Adjudication of Vacant Lands, at folio 12.

(Signed) ARCE.

I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office, marked as Exhibit "C," and annexed to the deposition of David Spence, taken before Commissioner Harry J. Thornton, Feb'y 25th, 1852, in case No. 30, Carman Sibrian de Bernal et al., Rincon de las Salinas y Potrero Viejo.

GEO. FISHER, *Sec'y.*

Filed in office February 9th, 1852.

Stamp third. Two reales.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTONIO MARIA OSIO.

{ Maritime Custom-House of Monterey. }

210 Juan B. Alvarado, constitutional governor of the department of the Californias

The most excellent departmental assembly in session on the 22d of the present month, approved the grant which this government made on the 10th of October last, of the land known by the name of the "Salinas and Potrero Viejo," in the following terms:

The grant made by the governor ad interim, Don Manuel Jimeno Casarin, of the land called the Salinas and Potrero Viejo to the person of "Don Cornelio Bernal is hereby approved."

And for the security of the said party, citizen Cornelio Bernal, and in confirmation of his said grant, these presents are issued in Monterey, May 30th, 1840.

(Signed) ALVARADO.
(Signed) MANUEL JIMENO,
Secretary.

I certify the foregoing to be a true and correct translation of its original on file in this case. Ex'de.

GEO. FISHER, R. P., *Sec'y.*

Filed Feb'y 9th, 1852.

JULY 20*th.*

211 EXC'T SIR: The most exc't junta of this department, in a note of July ultimo 13th, tells me what follows:

EXC'T SIR: I transmit to your exc'y a testimony of an act passed by the most exc't junta, with a view that the supreme government, by virtue of its

powers, may deign approve the titles of lands which have been granted to divers individuals of those of the missions as well as those of the 10 littoral leagues, for the reasons upon which said act is granted; and considering as well grounded the reasons on which said corporation relies for soliciting the approval of the grants of land within the 10 littoral leagues, and also those acknowledged as belonging to the missions, which have been granted and confirmed by the same corporation—

I cannot but transmit to your ex'y said testimony, with the respective report, adding my note to the decision of the junta, to the end that the supreme government may take them in consideration, and approve the aforesaid act.

212 Your exc'y will deign accept the proffers of my high consideration and respect. God, &c.

To his exc'y the Minister of the Interior.

I certify the foregoing to be a true and correct translation of an authenticated copy of the original on file in the office of the U. S. surveyor general of California, which authenticated copy is on file in this office.

San Francisco, June 30th, 1852.

GEO. FISHER, *Sec'y.*

Exceptions of United States to survey.

Dist. court of the United States for the northern district of California, *ss.*

UNITED STATES *vs.* CARMEN S. DE BERNAL *et al.* } No. 165.

The United States, by Wm. H. Sharp, the district attorney for the United States, comes and excepts to the official survey of the land confirmed
213 in the above-entitled cause, a copy plat of which survey has been returned into this court, and is on file in said cause, and alleges the following as grounds of exception, to wit:

1st. The said official survey does not conform to the final decree of confirmation in this, to wit: That under the terms of said decree, and of the grant on which the same is founded, the said land is bounded on the north by an arroyo there situate, whereas by the said official survey the said land is located considerably to the south of said arroyo, and does not touch or bound on the same; and also that by said decree and grant the said land is located at a certain distance northwesterly from the northeast corner of the establishment of Dolores, whereas by said survey the whole of said land is located due west of the said establishment, as it was at the date of said grant.

2nd. The land included in said survey is not the same land, nor any part of it, which was included in the grant or decree.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed April 6, 1863.

W. H. CHEVERS, *Clerk.*

214 *Opinion modifying survey.*

UNITED STATES *vs.* C. S. DE BERNAL. } Objections to survey.

The decree of the board was affirmed in this court apparently without objection on the part of the U. S., and a formal appeal taken from that decision was dismissed by order of the Attorney General.

In the decree of the board the land is described as "a lot 200 varas square situated 60 varas from the northwest corner of the establishment of the mission Dolores and one hundred and fifty varas from the N. east corner of said establishment to the northeast corner of said lot; the said lot lying on the south side of an arroyo which forms its northern boundary."

This description was derived from the depositions of witnesses who testified to the existence of the grant, which had been lost, and who professed to give the situation of the lot.

In the decree of this court, which has become final by the dismissal of the appeal, the land is merely described "as of the extent of 200 varas square, being the same land proved to have been granted to and occupied by
215 the claimant and his widow and heirs: Provided, that if there be less than 200 varas of land within the boundaries as proved to have been granted, then that less quantity only is confirmed."

The only evidence as to the situation or boundaries of the lot was that embodied in the decree of the board; nor has any additional testimony been taken in the present proceeding tending to establish with any definiteness the external boundaries.

It appears that Bernal, not long after his grant, commenced the building of a house, which, however, he does not seem to have completed.

This house was situated in the rear of the mission buildings, known as the escolta, or quarters of the escort or guard.

He appears to have claimed up to a small brook towards the north, but his other boundaries he seems to had but a vague idea of.

In the survey that has been made the lot is located as described in the decree of the board, viz: at the distance of about 50 varas from the NW. corner of the establishment and with its northeast corner distant one hun-
216 dred and sixty-one varas from the N. east corner of the same buildings.

The northern boundary is thus made to coincide with the southern boundary of 400 varas square, granted to Francisco Guerrero, Oct. 28th, 1836, and for which a patent has been issued by the U. S.

But this boundary is at some distance to the south of the arroyo spoken of by the witnesses and mentioned in the decree of the board as the northern boundary of Bernal's lot.

It is objected on the part of intervenors, claiming under a deed from Bishop Allemany, in whose name certain lands claimed as the property of the church were confirmed, that the official surveys embraces lands covered by the patent issued to the bishop.

The claimant admits the justice of this objection, and is willing that the boundary of her lot be modified so as to coincide with the boundary of the lands patented to Bishop Allemany.

It appears, however, that the deed by the bishop embraced a considerable tract outside of and not included within the tract subsequently confirmed to him, and for which a patent issued. The same intervenors, therefore,
217 in the name of the U. S., object to the location as made in the survey, on the ground that the arroyo referred to by the witnesses is not adopted as a northern boundary.

If this be done, the lot will, to a considerable extent, be located on land already patented to Palomares, and under a grant to Francisco Guerrero.

Against this the claimant, who is said to be widow and without other property than this lot, earnestly protests.

She urges that she is willing to relinquish that portion of the lot already patented to the bishop, but that it would be unjust to compel her to accept a location on lands which the U. S. themselves have already surveyed and patented to another.

If the boundaries of the 200-vara lot confirmed to the claimant were clear

and definite, the court would have no alternative but to locate the lot according to the calls, notwithstanding that it might overlass a patent already issued to another. If the U. S. have erroneously or improvidently issued a patent to another for lands clearly embraced within the grant to this claimant, this court has no authority to decree an equivalent elsewhere, and
218 notwithstanding that the hardship to the claimant may be great; but in this case the exterior boundaries, except the arroyo before mentioned, are not given by the witnesses or declared in the decree of confirmation.

If we adopt the arroyo as a boundary, the northwestern corner will be at a much greater distance from the northwestern corner of the establishment than that mentioned by the witnesses and stated in the decree, and yet that call would seem to be as important a part of the description as the call for the arroyo which was adopted in the decree from the testimony of the same witnesses who spoke of the arroyo. There seems to be a manifest injustice for the U. S. who have acknowledged the right of the claimant to a lot of 200 varas square to seek to locate it upon land which she would have been entirely willing to accept were it not that the government itself has by including it in a patent issued to another rendered practically unavailable to her, even tho' it should be included in a subsequent patent issued to her. But when by so doing one of the calls of the original decree of con-
219 firmation must be violated, and when on all the other sides no exterior boundaries are mentioned which would prevent such a location as will satisfy the decree, it would seem as if the U. S. or those claiming under them ought to be bound by the location they have themselves made of Guerrero's lot and by their own establishment of his southern and the claimants' northern boundary.

The survey, if bounded on the north by the line of the lot patented to the representatives of Guerrero and on the east by the line of the patent for the church lands will include only $6\frac{32}{1000}$ acres, being one-seventh less than the full quantity of 200 varas square confirmed to the claimant.

It has appeared to me that under all the circumstances this survey ought not be disturbed except so far as may be necessary to make the lines coincide with the lines of the church lands as described in the patent to Bishop Allemany.

Endorsed: Filed May 19, 1863.

W. H. CHEVERS, *Clerk.*

220 *Order modifying survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 21 day of May, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* C. S. DE BERNAL *et al.* } No. 165.

This cause came on to be heard on exceptions to the official survey of the land confirmed herein, which survey is shown by the certified copy plat filed August 4, 1862, and counsel for the respective parties being present, and due deliberation had in the premises, it is now ordered, adjudged, and decreed, that the said exceptions be, and the same hereby are, overruled, except so far as they allege a conflict between the lines of said survey and the lines of the land patented to Bishop Allemany.

And it is further ordered that the surveyor general of the U. S. for
221 Cal'a, reform his said survey, so it will not conflict with the church tract, and that he return a plat of such reformed survey without delay for approval and confirmation.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed May 21, 1863.

W. H. CHEVERS, *Clerk.*

Final decree.

At a stated term of the district court of the United States for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the third day of August, A. D. 1863:

Present: Hon. Ogden Hoffman, district judge.

THE UNITED STATES
v.
CARMEN SIBRIAN DE BERNAL *et al.* } No. 165.

This cause came on to be heard on exceptions filed to the official
222 survey of the land confirmed, shown by the plat filed August 4, 1862; whereupon the said exceptions were overruled by the court, except so far as they alleged a conflict between the lines of said survey and the lines of the land patented to Bishop Allemany, and by the order of the court made and entered May 21, 1863, the surveyor general of the United States for California was directed to reform his survey in that particular.

And it appearing to the court that the said surveyor general has reformed his said survey, in accordance with the said order, it is now ordered, adjudged, and decreed that the survey and location of the land confirmed, the field notes of which survey were approved by E. F. Beale, surveyor general of the United States for Cal'a, on the 27th day of July, 1863, is a good and valid survey of the land confirmed to the said C. S. de Bernal *et al.*, and that the said survey and location be, and the same hereby is, approved.

And it is further ordered that the certified copy plat of said survey and location, (containing five $\frac{86}{100}$ acres,) filed July 29th, 1863, and marked "approved August 3d, 1863, Ogden Hoffman, dist. judge," be attached to and made part of this decree for a more full and particular description of
223 the five $\frac{86}{100}$ acres of land now finally confirmed to the said Carmen Sibrian de Bernal and others.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed August 3rd, 1863.

W. H. CHEVERS, *Clerk.*

(Here follows plat or map, page 223.)

224

225 *Order granting appeal in behalf of intervenor, Dehon.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco on Friday, the seventh day of August, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
C. S. DE BERNAL *et al.* } No. 165.

This cause having come on to be heard on objections to the survey and location, by the surveyor general of the U. S. for California, of the land heretofore confirmed to said claimants, and the said survey and location modified and reformed by order of the court, made May 21, 1863, so as not to conflict with the lines of the land patented to Bishop Alemany for the Catholic Church, having been, by the final decree of this court, made and entered on the 3rd day of August, 1863, approved and adopted: Now, on application of J. B. Crockett, esq., attorney for William Dehon, executor of the last will and testament of Theodore Dehon, deceased, intervenor
226 herein, made in open court, it is ordered that an appeal in behalf of said intervenor, from the said final decree, be, and the same hereby is, granted, and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed August 7th, 1863.

W. H. CHEVERS, *Clerk.*

227 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing two hundred and twenty-six numbered pages (numbered from 1 to 226, both inclusive) to contain a full, true, and correct transcript of the record of the proceedings, and of the decision of said court, and the papers and evidence on which said decision was founded, as the same appear on file and remain of record in my office, in the case entitled "The United States, appellants, *vs.* C. S. de Bernal *et al.*, appellees, No. 165."

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court this ninth day of September, A. D. 1863.

W. H. CHEVERS, *Clerk.*

[Internal revenue stamp.]

Filed 10th December, 1863.

Supreme Court of the United States.

WILLIAM DEHON, EXECUTOR OF THEODORE DEHON,

INTERVENOR AND APPELLANT IN THE CASE OF THE

UNITED STATES

vs.

C. S. BERNAL *et al.*

Statement and Brief of Points on the part of the Intervenor and Appellant, Dehon, &c.

D. B. EATON, *Of Counsel for Appellant.*

New-York:

JOHN W. AMERMAN, LAW PRINTER,

No. 47 CEDAR STREET.

1865.

Supreme Court of the United States.

WILLIAM DEHON, Executor of THEODORE DEHON, Intervenor and Appellant in the Case of the UNITED STATES

vs.

C. S. BERNAL *et al.*

STATEMENT AND BRIEF OF POINTS ON THE PART OF THE INTERVENOR AND APPELLANT, DEHON, &c.

This is an appeal taken on the seventeenth day of August, 1863, from a final decree of the District Court of the Northern District of California, entered on the third day of August, 1863; the same having been granted by and taken pursuant to a formal order of said court.

And the record of the proceedings, evidence and decisions in that court are duly certified by the Clerk, under its seal.

Record, fols. 221 to 227.*

The appeal was applied for and granted within the six months allowed by the statute.

Record, fols. 222, 225 and 226.
12 *Statutes at Large*, (Act June 14, 1860,) p. 34, § 5.

The original proceeding was before the Commissioners for settling land claims in California, under the act of the 3d March, 1851, (9 *Stat. at Large*, p. 630,) and passed from them

* The references are uniformly to the left hand figures in the margin of the Record, as if indicating folios.

into the District Court, on application of the intervenor, who is the appellant here, from a decree of confirmation of an alleged Mexican grant.

The intervenor insists that the grant is invalid; that if valid, the location and survey, as confirmed, are erroneous and unjust as to him, and that he has rights of property, the due and proper protection of which justify him in claiming before this court a reversal of the final decree of the District Court approving and confirming the location and survey of the grant and land in question.

Proceedings below:

The Clerk of the District Court certifies, that the return to this court contains "a full, true and correct transcript of the "record of the proceedings, and of the decision of said "court, and the papers and evidence on which said decision "was founded, as the same appear and remain of record in "his office," &c., &c. Fol. 227.

Some confusion in the arrangement of the papers in the record calls for a chronological statement of the proceedings below:

1. The earliest paper or proceeding appears at folios 185 to 187.

It is a petition by Carmen Sibria de Bernal, (widow of José Cornelio de Bernal, grantee of the alleged Mexican grant, of which location and confirmation is sought,) who therein sets forth her claim before the Board of Commissioners, under date of 28th February, 1853. This petition is shown to have been duly *filed and recorded*, and the same is certified to by the United States Surveyor, on the 6th April, 1853. Fol. 188.

It is worthy of observation that this petition, *for some cause*, seems not to have been satisfactory to the claimant and petitioner, and it appears, therefore, to have been *ignored* by her and her counsel; and were it not for the bearing its statements have upon the questions of location and boundary, the intervenor might also allow it to escape without notice.

It will be referred to hereafter.

2. The *next* day, (one petition being dated 28th February, 1853, and the other first March, 1853,) the claimant filed a second petition for the same object, by Halleck, Peachy & Billings, as attorneys, which appears at folios 3 and 4.

A year thereafter two celebrated witnesses, José Castro

and M. G. Valligo, were briefly examined as to the grant and the location of the land granted, and a question was also asked of another witness, and a short affidavit of the petitioner was read. Fols. 4 to 10.

No one opposed the claim, and the only evidence of any one, even nominally, on behalf of the United States, being present on the examination of the two important and standing witnesses is to be found in a question, at folio 6, addressed to a witness of the claimant, which looks as if designed to bring out an important fact *in favor of the claim*, which the petitioner's counsel had evidently forgotten, and which one is almost forced to believe it was known the witness was ready to supply.

3. After this testimony, the matter having stood over from February, 1854, to August 8th, 1854, when the Board of Commissioners rendered their opinion and made their decree confirming the grant. Record, fols. 13 and 14.

Transcripts of such proceedings were transmitted to the Clerk of the District Court and to the Attorney-General of the United States. Fols. 14 and 15.

4. May 5, 1855, the Attorney-General of the United States entered an appeal from the decision of the Commissioners. Fol. 17.

Thereafter, (November 12, 1855,) the United States District Attorney filed a petition for a review of the decision of the Commissioners. Fol. 17.

And the claimant (the original petitioner, Carmen Sibria de Bernal,) filed an answer to that petition on the same 12th of November. Fols. 18 and 19.

But this formal issue and array between the claimant and the United States, however apparently threatening to the grant, was not fraught with the smallest danger, (any more than the defence before the Commissioners,) and appears to have only served to advance the claimant one step more in her measures for rendering unassailable the very suspicious and unsustained grant which she had set forth in her petition.

The record accordingly shows *no evidence taken and no proceedings whatever had* on this new issue; but some time afterwards, (there is no means of telling when, see folio 19,) the learned District Judge rendered an opinion, from which it appears that this new issue, and all pretended trial thereof, were as utter a sham as all prior proceedings had been. He says: (folio 20:) "*No argument in the case was* "*had at the hearing, nor did the District Attorney suggest*

" *any objection to the validity of the grant.* The claim was " confirmed by the Board, and we think, *in the absence of* " *any showing to the contrary* on the part of the Govern- " ment, it ought to be affirmed."

Certainly this was no trial, and the invalidity of the grant was evidently so apparent to the judge, that if the District Attorney had only "suggested an objection," almost without proof, the judge would have refused confirmation. Fol. 20.

It is evident the claimant was not in the least peril at any stage of this compendious and feasible proceeding for grasping a valuable portion of the national domain, and establishing the petitioner's claim, in the name of the Government, against private rights, not represented before the court. This case adds another to the long list California has afforded, illustrating the facility with which land claims may be judicially established, which would not have stood an hour before earnest and vigorous resistance.

5. It was at this stage of the case, (7th April, 1856,) that Mr. Thomas M. J. Dehon, then owning the intervenor's title, became aware of these facile proceedings which were perilling his rights.

He proved he had *personally occupied* the land, or a portion thereof, (by virtue of a purchase,) *since* 1850, *and then was in possession*, and that he claimed ownership of the same. Fols. 23 and 25.

H. W. Halleck, Esq., filed an affidavit the same day as those of Mr. Dehon were filed, and to oppose Dehon's motion, (7th April, '56,) but *he did not dispute the proof of Mr. Dehon*, that he (Dehon) *was then in adverse possession, and had so been in possession since* 1850, and that fact is no where disputed in the record. Fol. 27.

Mr. Dehon's motion, that the decree be opened, and he be let in to contest the pretended Mexican grant, and protect his own purchase and possession, was *summarily* and *peremptorily* denied; and the hearing and order refusing the last possible opportunity for making the first and only real opposition to the claimant, were completed, *all on the same seventh* day of April, 1856. Fol. 29.

In February, 1857, the influence, so potent in California, secured from Attorney-General Cushing a notice, (claimed by the respondent, it is supposed, to be a waiver of a right of appeal, but such is not its language for purport, see folio 29,) upon which the District Attorney for California, (more obliging than his predecessor, who required the legal forms, though not the substance, of a real contest to be observed,)

formally "*stipulated and agreed* that no further appeal should be taken on the part of the United States," &c., and that the claimant might enter a *final decree.* Fol. 30.

This *agreement* between the attorneys of record for the respective parties was made on the 2d of April, 1857, and was so *satisfactory* to the claimant, that not one day was allowed to elapse before an order of court was entered, which recited that the United States would not trouble the claimant with any further appeal, and gave the claimant a clear field to proceed "*as under final decree.*" All this was accomplished in *one day*, and it is a striking fact, that the *claimants were not, by their formidable adversary*, even put to the trouble of, even by her own attorneys, asking for this last sweeping order; but *the District Attorney himself actually moved the court to grant the order, and it is so recorded; and so at last we find all the attorneys on the same side of the record.* Fol. 31.

One District Attorney allows the claimant to proceed without actual opposition; the second being more obliging, makes an agreement that, waiving valuable rights of the United States and her citizens, permits the claimant to establish her unfounded claim without even the empty forms of an actual judicial proceeding; and the third, not to be outdone by either of the two former, goes further, and in his own person *moves and carries through the court* an order that was adapted and intended to forever confirm this unproved and suspicious claim, and to estop the United States and her citizens from ever calling it in question!

What case was ever so weak or fraudulent as to fail of success against such resistance and with such co-operation?

We have now arrived at the interesting stage of this extraordinary proceeding, at which the only parties or persons that *manifested any disposition to resist* this grant, have been summarily turned out of court, and at which the party *whose duty* it was to resist, has utterly, finally and fatally neglected that duty, and has apparently closed all official connection with the matter by *stipulating and agreeing* to let the claimant have her own way, and praying the court for, and entering an order that should forever execute and establish the agreement.

No one can fail to perceive how vigilant and valuable must have been the services of the attorneys for the claimant; and it is not unpleasant to the *professional* reader to turn to the 172d folio of the record; for there he will find that on the twenty-first of April, a conveyance of *one-half* the property confirmed was made by the claimant to her able and successful attorneys, under such circumstances and with such

provisions as to have little occasion to fear that a poor Spanish widow of California was incapable either of ingratitude or a want of proper appreciation of professional ability.

This document, so illustrative of the widow's appreciation of unexpected good luck, also contains some boundaries of the property, of value and interest in another connection, in which they will be referred to.

6. Mr. Dehon had valuable rights in peril, and he would not stay thrust out of court; and his rights having been sold to his brother, (since deceased,) we find that brother before the court, for their protection, with his counsel and petition, at folios 32 to 36.

He and those rights were under the protection of the provisions of the statute of 3d March, 1851, (9 *Stat. at Large*, p. 633, § 13,) and of June 14th, 1860, (12 *Stat. at Large*, p. 33, §§ 1 to 6.)

This last act is in part repealed by the § 8 of the act of July 25, 1864.

7. The *sworn* petition of Mr. Dehon shows:

(1.) That he is the owner of a part of the land decreed to the claimant, Widow Bernal, and of other land near by; (2.) That the Surveyor-General, under the § 1 of the act of 14th June, 1860, and the § 13 of the act of 3d March, 1851, had approved the plots and location of the Bernal claim under the final decree, and had published notice thereof; (3.) That the survey and location were erroneous, and that he is a party interested in having the survey and location corrected, &c., &c. Fols. 32 to 35.

He prays to have the survey ordered to be "returned into court, and that it be reviewed, reformed, or set aside." Fol. 35.

Under the §§ 2d and 3d of the act of 14th June, 1860, the court decided that Mr. Dehon was so *interested* in the survey and location as to be entitled to intervene, and ordered that the Surveyor-General return "into court his official survey and plat of the land finally confirmed," &c. Fol. 36.

Now, for the first time, there is a *real contestant* of this claim before the court. The United States having utterly neglected and failed, either to protect its own domain or the private rights of its subjects, a citizen is permitted to come in and vindicate his own rights.

The contest, substantially, went on between two private claimants, although the United States excepted and *appeared*, and took part therein.

The nature and effect of this contest will be hereafter considered.

8. A monition in the name of the President of the United States at once issued, calling on "all parties having, or "*claiming* to have, an *interest* in such survey and location, "that they be and appear before the court," &c., "there to "intervene for the *protection of such interests*," &c., "or "their defaults will be taken," &c. Fols. 37 and 38.

Due return was made to the monition. Fol. 39. Mr. Dehon appeared to protect his interest; the "United States "Attorney *appeared in behalf of the United States*, and the "following order was entered:

"No *other* party appearing, &c., it is ordered that the de-"fault of all parties *not appearing*," &c., be, and the same is "hereby entered." Fol. 40.

The right of the United States to further (or rather really) contest the survey, is therefore clearly *reserved.*

9. Thereupon, Mr. Dehon, by his attorney, (or rather his estate, he having deceased,) filed formal exceptions to the survey. It is charged as being erroneous, and that it should be set aside. It is declared not to conform to the decree, and *not to embrace any of the land confirmed to the claimant*, and that it is located on lands "*which, in fact, belong* to the estate of the said Theodore Dehon," and that "the estate was *in possession*" thereof, &c., and further alleges that a part of those lands have been confirmed and patented to the grantor of said Dehon, which title he has. Fol. 41, and see fol. 34.

It should be observed, that the estate of Dehon claims *to own, and to be in possession of, the whole land embraced in the survey*, though only a portion had then actually been patented and confirmed to its grantor, Archbishop Allemany.

9*a*. Exceptions to the survey confirmed were in like manner filed by the District Attorney, in the name and on behalf of the United States, but, (with a confusion peculiar to this record,) these exceptions are to be found near the end of the return, at folio 212.

These exceptions, filed by United States Attorney Sharp, (he being the third District Attorney who has appeared in the proceeding,) declare:

(1.) That the official survey does not conform to the final decree.

(2.) That by the survey the land confirmed is bounded on "the north by an *arroyo*, (brook,) whereas the land confirmed "is *considerably* to the south of the arroyo, and does not touch or bound on the same," &c.

(3.) That the decree declares the land northwest from the *northeast* corner of the *establishment* of Dolores; whereas, by the survey, the land is *due west* of said establishment.

(4.) "That the land included in the survey is not the same land, *nor any part of it*, which was included in the grant or decree." Folio 213.

These exceptions of the District Attorney define pretty distinctly the questions that are to be discussed, as to the correctness of the survey and location under the decree.

10. The claimant filed no denial of the claims and allegations of the Dehon estate, as intervenor, but the court, (only represented by a commissioner,) with the original claimant, the Dehon estate, as intervenor, and the United States, as the three parties before it, proceeded to take a large amount of additional testimony. In taking this testimony, the three above named parties in interest, (including the United States District Attorney,) *uniformly* appeared to the end of the testimony.

See fols. 44, 55, 61, 69, 74, 79, 85, 90, 93, 106, 116, 129, 136, 140, 146, 153.

11. The large amount of testimony (oral and documentary) taken on these new issues, seems designed to sustain the following positions:

(1.) That the Dehon estate had such an *interest* in a correct survey and location of the grant as to be entitled to intervene and be heard. The *full extent* of this interest, and still less the exact amount and boundary of property of the estate owned in fee simple, was not much the subject of controversy.

(2.) That a part of what the estate unquestionably owned in fee was embraced in the limits of the survey and confirmation.

(3.) That it was legally impossible that a valid grant could have been made at the time and in the manner stated in the evidence offered to sustain this grant.

(4.) That the survey and location of the land did not conform to the final decree of confirmation.

That a well-known *arroyo* was made the northern boundary

of the land alleged to be granted, and was named as such boundary in the final decree by which it was confirmed, but that the survey arbitrarily fixed the northern line *far south* of the arroyo, and thereby located the grant *wholly on the land claimed and occupied by the Dehon estate*, and partly on land confirmed to Dehon's grantor, (Archbishop Allemany,) and indisputably owned in fee by the estate.)

12. At the conclusion of the testimony there follows an opinion of the court. Folio 214.

A clear understanding of this opinion at this stage of argument is desirable:

(1.) The learned judge admits the final decree of confirmation located the land "on the south side of an arroyo, *which* "*forms its northern boundary.*"

(2.) Folio 215, the judge says, all the testimony, as to boundary, was embodied in the decree of the Board, and adds: "nor *has any additional testimony been taken in the present proceeding, tending to establish, with any definiteness, the external boundaries.*"

This important declaration must be borne in mind, when we come to consider the reason and authority of the court for wholly disregarding the only clear and certain boundary proved, viz., the arroyo forming the line on the north.

(3.) The unquestionable certainty of this northern boundary on the *arroyo* and the dubiousness of all others, is further made prominent by the judge, (fol. 215,) where he says: "He (Bernal) appears to have claimed up to a small brook "(arroyo) toward the north, but *his other* boundaries he ap- "pears *to have a vague idea of.*"

Will it not then be very strange indeed, if the legal result shall be that the only boundary ever *claimed* or clearly understood by Bernal, the most special and definite boundary fixed by the decree of the Board of Commissioners and confirmed by the court, is utterly disregarded and overruled, while the vague outlines, which neither the claimant, the Board of Commissioners, the court, nor the witnesses could define, shall be made and treated as being absolute, certain and controlling in the survey and location?

Yet, at folio 216, the judge *clearly announces such a result.* He refers to the survey as *about* corresponding to the decree as to distances; says the surveyor has succeeded in making the northern line correspond (not at all with the arroyo,) but with some old boundary of a grant (not at all involved in or

connected with the present proceeding) to one Francisco Guerrero, made in 1836, and then, (referring to the northern boundary of the grant in controversy, *as he fixes it*,) says:

"But this northern boundary is at *some distance to the* "*south of the arroyo* spoken of by the witnesses, *and men-* "*tioned in the decree* of the Board as the *northern* boundary "of the Bernal's lot."

The evil of so clear and unhesitating a disregard of all the testimony before the court, and of its own decrees, is certainly, to some extent, mitigated by so distinct an admission of the fact, as it relieves this court of any critical inquiry as to what was really done and intended by the court below, and only calls for a remedy easy to apply.

(4.) The judge then (folio 216) proceeds to give his reasons for thus setting at defiance both the evidence and the decree.

He admits the title of the plaintiff, taken from Bishop Allemany, (and under his patent,) covers a part of the land embraced in the Bernal survey ordered to be returned into court, and there opposed by the intervenor. The claimants, (Bernal and Halleck, Peachy and Billings, as joint owners,) he says, also admit the same fact, but they also consent to have the survey so modified as not to embrace any of the land so held in fee under the Allemany patent. They thereby, of course, artfully intend to utterly disregard the facts that the Dehon estate claims, and was and is in possession of the whole land confirmed to Bernal. They hope, by such apparently very generous concession, to get the estate out of court again, as the only method of saving any portion of their pretended Mexican grant.

But even if the court was authorized to utterly disregard the known and confirmed boundaries of the Bernal grant, merely *because* Bernal's widow and her attorneys consented to some slight modifications of the survey, *on condition that the survey and location of the residue should be confirmed as last surveyed*, and the grant located at *a point remote from its real and known boundaries*, there was a formidable difficulty in the way of fixing this vagrant quality upon the grant.

That difficulty was the fact, (before alluded to, and now recognised and admitted by the District Judge,) that the Dehon estate *claimed under deed, and occupied a large amount of land outside what had been patented to Archbishop Allemany. This outside land embraced more than all the land contained in the contested survey before the court.* Fols. 216, 217, and folio 41.

Though the judge says the intervenors demanded that the location should be upon the *arroyo*, as the decree and evidence required, it is very clear, from the opinion, that he had forgotten, or had ceased to consider as of any importance, the true boundary or decreed location of the Bernal grant, and that he had given himself up entirely to the consideration of the question of so locating that grant *at almost any possible point near* the Mission Dolores, as to satisfy some conceptions of equity or theory of judicial discretion or expediency, of which no precedent has been found either in the statutes or the reported decisions.

He states, (doubtless from his memory rather than from any pretended authority in the evidence,) that if the Bernal grant is located where the decree confirms, and where all the testimony locates it, (on the arroyo,) it will interfere, he fears, with a patent to a certain Spanish woman, named Palomares, (under a pretended grant to one Francisco Guerrero,) and *having heard*, as he says, that the good woman, Palomares, is yet a widow and poor, (as one can be who has a great Spanish land grant of *many acres* of blocks and houses in the City of San Francisco,) and this Spanish widow, Palomares, (it may be easily imagined, with dramatic grace of person, and full, dark, warm, lustrous eyes, pathetically and imploringly fixed on the judicial presence,) "earnestly protests," (of course with all the plaintive persuasion and logical power of her insufferable poverty, and her inconsolable widowhood,) against the loss of a single acre of her ground, or a single block of her houses!

It must not be forgotten, also, that Widow Bernal sat by the side of Widow Palomares and protested just as earnestly.

The learned judge certainly intended, amid all the embarrassments of his interesting position, to apply the law and the facts justly and correctly; but it is no matter of surprise if the intervenor feels that for the moment he forgot both *law and facts*, and was able to see nothing paramount to the gallantry and duty of protecting and consoling this interesting pair of weeping, imploring Spanish widows in their weeds, by giving them any land in the vicinity, whether owned by the United States or the intervenor, without much regard to the language of the grant, or the decree confirming it.

The result was, that Widow Palomares dried her tears and left, without the loss of a block or an acre; and Widow Bernal and her attorneys surrendered a small corner of the survey, but in return got the survey of their grant confirmed to

the residue, in a location far more satisfactory than the marshy, miasmatic, banks of the remote arroyo.

The court expressly says, Widow Bernal (like Barkis) was "willing" to accept what was offered, and no more "earnest protests" have ever been heard from her or her attorneys. It is believed that her lamentations have ceased and that her grief is assuaged. We are permitted to console ourselves with the belief that Widow Bernal and Widow Palomares are happy.

Had it been urged on the court that the intervenor is the executor of the estate of the late Theodore Dehon, Esq., (who lost his life by reason of over-exertions, as a member and treasurer of that body of patriotic citizens in the City of New-York, who forwarded those early regiments here that saved this national capital from Confederate spoliation,) had the judge volunteered to supply for the record the evidence, (as he did for the Spanish widows,) that the real parties in interest on this side of the case are the *widow* and the then infant child of Mr. Dehon; then, perhaps, on all grounds of chivalry and gallantry, and in the light of that more generous sort of judicial discretion, (so paramount with the learned judge,) which has its source quite as much from the heart as from the intellect; which appeals for its sanction rather to our emotions than to reports or statutes; this appeal would have suffered no peril, either from the magic presence and "earnest protests" of two Spanish widows of California, or from the absence of the widow and infant daughter of a patriotic citizen of New-York.

These facts of our orphanage and widowhood do not appear to have been stated, and the survey was confirmed, leaving the humble arroyo in the distance, as we think, in spite and violation of logic, law and facts.

It is something in our favor, however, that the court (fols. 217, 218) says, that if the boundaries had been "clear and "definite, the court would have had no alternative but to "locate the lot according to the calls, *notwithstanding that* "*it might overlap a patent already issued to another.*" He declared the court would have "no authority to decree an "equivalent elsewhere," merely because some other patent had been inaccurately located, or (we venture to add) a Spanish widow might "earnestly protest."

These rules we are perfectly satisfied with. If the Guerrero claim was inaccurately located, and was one that should never have been confirmed at all, *the facts are doubtless known to the attorneys of Widow Bernal, as they are understood to have conducted the proceedings for the location of the*

Guerrero claim, during the time of the pendency of the Bernal claim before the Commissioners and court below.

(5.) We propose (adopting the rule of the District Court) to show that the Bernal grant was clearly not embraced in the boundaries confirmed, and that the boundary on the north, on the arroyo, was so "clear and definite," that the court had "no authority to decree an equivalent elsewhere," as it did, to the prejudice of the rights of the intervenor.

But it should be noted here that the court actually admits that his own rule of location (mentioned above) was violated by the location he confirmed, for he says, (folio 219,) "but "in this case the exterior boundaries, EXCEPT THE ARROYO, "before mentioned, *are not given by the witnesses*, or de- "clared in the decree of confirmation."

Admit it; the decree, however, says, the land is to be surveyed in a *square* form, "the said lot lying on the south side "of an arroyo, *which forms the northern boundary of said* "*lot*," &c. Fols. 13 and 14, and 22.

Now, even had not the decree (as it really does, however,) fixed the place of the grant along the south side of the arroyo, where the plat was to be located, would the fact that the *arroyo north line was the only certain and fixed boundary*, be any justification of the ruling of the judge, which disregards the only boundary *he admits to be* "*clear and definite*," and implicitly follows some (for the most part merely implied) directions, which allow a boundary and location remote from the arroyo?

(6.) The court then proceeds to state a difficulty, which he thinks will follow if the arroyo north line is regarded. It is that the distance of the plat from the mission-house will not conform to the decree. It is premature to answer that point here.

We claim, however, (1.) That the distance of the decree must yield to the *certain* arroyo line. (2.) That if the direction of the land northwest, instead of west, as the decree required, had been followed, there would have been no trouble as to distances.

(7.) The learned judge then (folio 219) appears to abandon his rigid rule of location, just laid down, as to conflicting patents, and proceeds to justify himself, disregarding the arroyo north line, on the ground of equity and natural justice.

It would have been more interesting to the intervenor if the learned judge had attempted to discuss the question in

this aspect, as between Widow Palomares and Widow Bernal on the one side, and Widow Dehon and her daughter on the other. The discussion relates wholly to the relations between the pair of Spanish widows and the United States.

If Widow Palomare's claim is valid and correctly located, Widow Bernal will be unable to get any of Widow Palomare's block of houses, wherever Widow Bernal's claim is located.

If Widow Bernal's claim is really for the same land as Widow Palomares, no reason is seen why the United States should give either of them ten acres of blocks of houses in the City of San Francisco, merely because the Mexican Governor never gave one or the other, or either of them, a valid grant of a warren or goat pasture on the quagmire banks of this little arroyo.

In short, these Spanish widows, *having never contested their claims together before the court*, will be at liberty to do so when each has a patent. But *after this proceeding* Widow Bernal and Widow Dehon *having been once contestants before the court, it may be that Widow Dehon cannot elsewhere call in question the location of Widow Bernal's claim as it shall be now finally confirmed. Hence the necessity of allowing Mr. Dehon's executor to now insist on a true location of Widow Bernal's grant, at least to the extent of removing it entirely from the claim and possession of Widow Dehon.*

(8.) It may be added here that the learned District Judge confirmed the survey made subsequent to the intervention, that disregarded the arroyo north line; the square tract being so modified in shape as to present a very *irregular outline*, and to exclude only so much of the intervenor's rights as had been *confirmed* by patent to Archbishop Allemany. It wholly disregarded Widow Dehon's claims and adverse possession. Fols. 219 to 224.

The shape of the plat appears on map. Record, p. 223.

Exhibit Matthewson, No. 1, Record, p. 127, will show the relative position of the survey and the arroyo.

(9.) We will now proceed to examine together, in a general manner, the evidence in the record, in reference to the following material points:

I. The arroyo north line, and the well-known existence and location of the arroyo.

II. The square form of the grant; its location northwesterly from the "Mission establishment," and the distance of the land granted therefrom.

III. The grant claimed is legally impossible, and must be regarded as void, and should not be confirmed.

IV. The title, interest and claim of the intervenor.

Evidence and proceedings on the three first above points, before the final decree of the Board of Commissioners.

I. The mysterious, *suppressed*, original petition of Widow Bernal says: "She claims a certain tract of land of two "hundred *varas in square*, situated *in the Mission of Dolores* "de San Francisco, to the northwest of the church and the "other principal buildings of said mission, distant *about four* "*hundred yards*, bordered to the south and southeast by the "mission lands, to *the west by the lands of Mr. Guerrero*, and "to *north and northeast by the mission stream*. That your "solicitress claims the same in fee, by virtue of a grant made "to her deceased husband, said José Cornelio Bernal, under "the authority of the Mexican Government, by Dn. José "Fiqueroa, Governor of the Territory of High California, "*bearing date of* 1833." See folios 185, 186.

The carefully matured, *substituted* and far more discreet and safe petition is much more non-committal as to date of the grant and the distance and direction of the land from the mission; and it is noticeable that the troublesome little arroyo is not complimented by the slightest notice, though it could scarcely have been forgotten or have *dried up* in the *twenty-four hours* that had elapsed since making the first petition. This substituted petition says: "That about the year 1834, "José Fiqueroa, Governor of California, by virtue of author- "ity in him vested, granted to the said José Cornelio Bernal "a tract of land, near the Mission of San Francisco de Asis, "or Dolores, in the present county of San Francisco, two "hundred varas *square;* which lot of land was immediately "taken possession of by the said Bernal, and improved, and "has been in the possession of him, the petitioners, his "widow and *only child*, thenceforward to the present time." Folio 3.

Note.—As Widow Bernal here appears to have an *only* child, and Widow Dehon has an *only* child also, the interesting equities and emotional suggestions that were so potent and perplexing with the learned judge below, appear, after all, to be equally balanced, except in so far as a Spanish widow and orphan may be more irresistibly fascinating, or present more sacred claims upon the indulgent consideration of a national court of equity, than a widow and orphan of pure American birth and lineage.

Jose Castro, the first witness called by Widow Bernal, speaking of the lot or *solar* granted, says: "Said solar or lot "is situated sixty varas, *more or less*, from the northwest "corner of the establishment of the Mission of Dolores, and "one hundred and fifty varas, more or less, from the north- "east corner of said establishment of Dolores, to the north- "east corner of said solar, the said solar lying on the *south* "*side of an arroyo, which forms the northern boundary of* "*said solar.*" Folios 5 and 6.

Vallejo, her next witness, said: "The solar granted, as "above stated, is situated in a northwest direction from the "old church of said mission, *and close by an arroyo which* "*forms the north boundary* of said solar." Folio 7.

Morenhout, the widow's only other witness, said nothing as to location.

The widow swore to an affidavit that was allowed to be read in evidence, in which she only says her husband received "a title for a lot of land near the mission building "of Dolores, two hundred varas *square.*" Folio 10.

On this testimony, the Board delivered their opinion, which says: "the lot granted as situated in a *northwest di-* "*rection* from the mission, *and bounded on the north by an* "*arroyo*, and one of them describes the lot as located at the "distance of sixty varas, *more or less*, from the *northwest* "corner of the establishment of the Mission Dolores, and "one hundred and fifty varas from the northeast corner of "said establishment of Dolores, to the northeast corner of "said solar or lot. This description, (with the arroyo *fixed* "*as the northern line of the premises,*) and the *size and shape* "of the lot (two hundred varas square) given, would seem "to enable a surveyor without difficulty to survey the land." Folio 12.

The final decree of confirmation made by the Commissioners, after stating that the lot "is two hundred varas square," describes, locates and bounds the same as follows: "said lot being situated sixty varas from the *northwest cor-* "*ner* of the establishment of said Mission of Dolores, and "one hundred and fifty varas from the northeast corner of "said establishment of Dolores to the northeast corner of said "lot; *the said lot lying on the south side of an arroyo, which* "*forms the northern boundary of said lot, and lying in a* "square form." Folio 13.

The decree of the District Court, after the first appeal of the United States had been abandoned, finally confirmed the foregoing decree, without any specification of boundaries; but after having first referred to the lot as being "two hundred varas square," this confirmation of the learned District Judge

adds the following distinct limitation to the location of the original decree, viz.: "*provided that the said quantity of two* "*hundred* varas square, now confirmed to the claimants, *be con-* "*tained within the boundaries of the land so proved to have* "*been granted; and if there be less than that quantity* "*within the said boundaries, then we confirm to the claimants* "*that less quantity.*" Folio 22.

Evidence subsequent to Dehon's Intervention on Points I., II., III., above.

I. *As to arroyo and northern boundary:*

F. SANCHEZ, (intervenor's witness,) explaining both as to the existence of the arroyo, and also of a ditch or artificial channel, called an "acequia," testified as follows:

20. "Do you know the acequia to the north of said build- "ing of Bernal? If so, do you know when the said acequia "was made there?

Ans. "I do. It was made before I was born. I do not "know when.

21. "From whence does the water come which supplied "the said acequia?

"(Objected to as irrelevant.)

Ans. "From the top of a hill, where there is now a college.

22. "Do you know whether there was in 1834, and prior "thereto, and is now, an arroyo, *a short distance to the north* "*of the acequia, nearly parallel with it?*

Ans. "I do. *There is an arroyo, and it runs to the cañada.* "It is *about fifty or sixty varas distant from the acequia.*

23. "State whether or not the waters of the acequia are "supplied from the said arroyo?

Ans. "No; they are not. The arroyo has its source from "the marsh called las manzanitas. The acequia came from "a spring near the college.

24. "In 1834 and 1835, and prior thereto, from the time "you first knew the mission, by what name was the acequia, "and by what name was the arroyo called or known at the "mission?

Ans. "*The arroyo had no name whatever. It was called* "*the 'arroyo.' The acequia was always spoken of as the* "*acequia of the mission.*

25. "*Was the said arroyo a permanent running stream,* "*or was it dry in the summer?*

"(Objected to as irrelevant.)

Ans. "*I have never seen it dry; it was always running.*

29. "Do you know whether or not there *is or ever was any* "*other arroyo* than the one you have described near to the "house which Bernal commenced to build?

Ans. "*There never was.*

30. "*Which runs upon the highest grounds, the arroyo or* "*the acequia?*

Ans. "*The acequia.* The arroyo runs below in the cañada.

31. "What was the difference between the arroyo and an "acequia, as understood by native Californians, from 1834 "to 1840, and from thence up to this time?

Ans. "*An arroyo is a natural stream,* and *an acequia is* "*made on purpose to have water brought along, as in an aque-* "*duct.*

"Cross-examination waived." Fols. 49, 50, 51 and 52.

HUMPHREYS, a modern surveyor, another of intervenor's witnesses, having identified a map marked with his name, shows that both the natural and artificial channel can even now be readily traced, the arroyo channel *on his map, as on every other, being marked* far to the north of the ditch. Fols. 63 and 64, and see folio 50.

He says the survey *does not*, but should, conform to the decree. Fols. 65, 66.

C. VALENCIA, another witness of intervenor, who was familiar with the ground early and late, says:

10. "Who, if any one, occupied the ground to the rear of "De Haro's ground, and between it and the foot hills?

Ans. "No one occupied it.

11. "Was there or not, when you first knew the mission, "an acequia near to and north of the houses of the escolta?

Ans. "There was.

12. "*Was there or not an arroyo near to and to* the *north* "of the acequia?

Ans. "There was." Fol. 72.

M. B. VALENCIA, another witness for intervenor, says:

10. "Who occupied the ground to the rear of the lot on "which De Haro lived?

Ans. "No one that I know of.

11. "Do you know whether or not there was an acequia, "in 1834, near to De Haro's house, and a little to the north "of it?

Ans. "I have always known of that acequia being there.

12. "In 1834 was it an old acequia, or had it then been "recently made?

Ans. "It was an old acequia.

13. "*Was there not at that time an arroyo* TO THE NORTH "*of the acequia?*

Ans. "There was." Fols. 76, 77.

J. C. SANCHEZ, another witness for Dehon, says:

17. "State whether or not there was an acequia near to and "north of the houses of the escolta, when you first knew the "mission.

Ans. "There was.

18. "Was there or not, at that time, an arroyo near to *and* "*north* of the acequia?

Ans. "There was." Folio. 93.

CHARLES BROWN, witness for Dehon, says:

11. "When you first knew the mission, was there or not "an acequia to the north of De Haro's lot, and was there or "not an arroyo to the *north* of the acequia?

Ans. "There was an acequia to the north of De Haro's lot, "and there was a stream of water to the north of that, but "I would not call it a regular arroyo." Folio 88.

P. A. M. CASTRO, and other witnesses, were then called by Widow Bernal, and, as to the situation of the ditch and the arroyo, Castro says: (using the name "sanja," instead of "acequia," for ditch:)

10. "Do you know *a sanja or ditch*, which existed near "Bernal's house in 1834 or 1835?

Ans. "I do.

11. "Have you recently pointed out to Doctor Matthewson, "upon the ground, the course of said sanja as it existed in "those years?"

Ans. "Yes, sir.

14. "Do you recollect an arroyo which, in the years be- "fore referred to, ran a short *distance from the sanja;* and

" if so, did you point it out to Doctor Matthewson as it ex-
" isted in those years?
Ans. "I do recollect it, and did point it out to him." Fols. 95, 96.

And, again, on cross-examination:

52. "Was there not in 1834 or 1835, and has there not
" been ever since, an arroyo *to the north of the adobe house,*
" *which you say was built by Bernal?*
Ans. " *Yes, sir.*
53. "*Did the sanja, to which you have referred, run be-*
" *tween the adobe house and the arroyo?*
Ans. " *Yes, sir.*
54. "Is that sanja the same which ran near?
Ans. "It is." Fol. 104.

GABRIEL CASTRO, the next witness called by Widow Bernal, is equally unable to discover the cause of those obscurations as to the lines, which arose in the judicial mind for the first time, while Widow Palomares imploringly gazed, and Widow Bernal "earnestly protested."

He says:

12. "Do you recollect an arroyo which, in the years before
" referred to, ran a short distance *north* of the sanja; and if
" so, did you point it out to Doctor Matthewson as it then
" existed?
Ans. "I do recollect, and did point it out to that gentle-
"man.
19. " *What was the boundary of the lot on the north?*
Ans. " *I suppose the arroyo or the sanja.*" Fols. 109, 111.

MATTHEWSON, one of Widow Bernal's surveyors, and her next witness, is so far from sharing the difficulties of the learned judge, that he finds both arroyo and ditch, and gives the *distances of parts of the lot surveyed from the arroyo with precise accuracy.*

He says:

13. "Is the arroyo, as laid down, the main stream; or
" does the great body of the water supplied by the spring
" from which the said arroyo comes, flow towards the south-
" east to the north of the arroyo, as laid down by you?

Ans. "*It is the main arroyo* where it crosses the road to "the Presidio. But in the valley to the northwest of this "point.

16. "What is the small crooked line, with an arrow at the "end, at the northwest corner of survey No. 1, intended to "indicate?

Ans. "It indicates an arroyo, well defined at that point."

NOTE.—It may be remarked, in reference to this testimony and the map, marked Matthewson, Exhibit No. 1, that if the *two* arroyos referred to are any thing more than two parts of the same natural stream, (now partially obliterated for a short distance by ditches, for the purpose of draining the swamp through which the arroyo passed,) that the witness shows that the arroyo referred to by the other witnesses is still readily traced, and that the second (if there be such) is still further north and more remote from the location made. See answer to 18th question, fol. 123.

PERATTO, the claimant's next witness, (who calls the arroyo a "little creek,") declares that Bernal located his lot on the arroyo, and thereon built a house at the margin of the creek. He is very specific, as follows:

4. "Did you know José Cornelio Bernal in his lifetime; "if so, did he ever point out to you a lot of land at the mis- "sion Dolores, which had been granted to him by the Mex- "ican authorities?

"(Objected to as incompetent.)

Ans. "I knew him, and he pointed out to me the lot.

5. "*State in what year Bernal pointed out the land men- "tioned. State the situation of the said land, and whether "there was a house, or the foundation of any house, upon it.*

"(Same objection as last.)

Ans. "About the year 1835 or 1836 Bernal took me over "to see the lot. The house was already commenced; the walls "were up, and they were covered up with brush—branches "of trees. *The house was situated about three hundred "varas from the church, on the margin of a little creek;* a "little place was made where they drew the water from." Fols. 129 and 130.

On his cross-examination, he shows that if Matthewson

intended to convey the idea there ever was more than *one arroyo*, he was clearly mistaken.

He says:

13. "*Is the arroyito, marked on the diagram which you* "*have produced, the only one which was in that vicinity to* "*the north of Bernal's house?*
Ans. "Yes, sir; the only one.
14. "*Is that arroyito the one which Bernal pointed out to* "*you as the boundary of his lot on the north?*
Ans. "*Yes sir.*" Fol. 133.

Feliz, the next witness of the claimant, is equally clear as to the lot being bounded on the arroyo or creek. He says:

5. "Where was the lot situated, and what were its boundaries?
Ans. "It was situated back of the mission houses; the "boundaries were the soldiers' houses on one side; *the creek* "*on the other.* He did not tell me the others." Folio 137.

This is substantially all the testimony on the subject of the arroyo and northern boundary, and there is, we submit, no contradiction, no obscurity, no difficulty, in making a survey; and that the disregard of this arroyo boundary in the final decree of the learned judge below is wholly unwarranted and indefensible.

II. The square form of the grant; its location northwesterly from the "mission establishment," and its distance therefrom:

(1.) *Square form.*—It is enough to say on this subject, that every opinion and decree in the record and the declaration of every witness who mentions the subject, is to the effect that the grant was in form square. Never was any other form suggested till the learned judge gave it a very irregular form, to meet the very irregular suggestions, assumptions and appeals which are noticed in his final opinion.
See, for illustration, fols. 3, 5, 11, 13, 18, 22.

(2.) *Direction and distance northwest.*—Castro, the claimants' principal witness, fixes them as follows:

"Said solar or lot is situated sixty varas, *more or less*, from

" the northwest corner of the establishment of the mission " of Dolores, and one hundred and fifty varas, more or less, " from the northeast corner of said establishment of Dolores, " to the northeast corner of said solar, the said solar lying " on the *south side of an arroyo, which forms the northern* " *boundary of said solar.*" Fols. 5 and 6.

The other original witness testifies as follows: "The solar " granted, as above stated, is situated in a northwest direc- " tion from the old church of said mission, *and close by an* " *arroyo, which forms the north boundary of said solar.*" Folio 7.

It will be seen that the latter gives no distances, and the former qualifies his distances by " more or less;" and that the 150 varas of Castro, from the *northeast* corner of the *establishment* to the *northeast* corner of the tract, *necessarily must include and measure some part of the distance of one side of the lot.* And as each side of the lot is 200 varas in length, it is plain that a line of 150 varas (though consider- able allowance should be made for the variation of " more or less") would not reach from the northeast corner of the mission to the northeast corner of the lot, if their nearest approach was sixty varas, and their side lines were perpen- dicular to each other. But if the north line of the lot is run on the arroyo, and the exterior lines of the mission and the lot are thereby, as they should be, drawn oblique to each other, then the distances are approximately correct, and no part of the description is violated or disregarded. See the diagram hereto attached.

The opinion of the Commissioners follows the testimony of CASTRO. Folio 12.

Their decree also follows it, but leaves out the qualifying phrases " more or less," and is as follows: " Said lot being " situated sixty varas from the *northwest corner* of the establish- " ment of said mission of Dolores, and one hundred and fifty " varas from the northeast corner of said establishment of " Dolores to the northeast corner of said lot, *the said lot* " *lying on the south side of an arroyo, which forms the north-* " *ern boundary of said lot, and lying in a* SQUARE FORM." Folio 13.

When we proceed to the testimony after Mr. Dehon's inter-

vention, we find some testimony as to those distances and directions:

(1.) It appears that Bernal's land, as he declared, commenced "sixty varas from his house *toward* the establishment "of the mission, *taking the direction of the De Haro* house." Folio 100, 101.

NOTE.—What is meant by the "mission establishment," or the "establishment of the mission of Dolores," from which the distance and direction are taken, (see decree, fols. 12 and 14,) may be of some consequence. These phrases have been treated in the case as referring to the *principal building* at the mission; and it is obvious that if they refer to the ground, or the several buildings taken together, then the Bernal grant will be *thrown further away*, and will still less interfere with the rights of the intervenor. The map, marked Matthewson No. 1, shows many of these buildings, and most of them to the east of the main building, from which measurement has been made. The record describes several of these buildings; and to be *northwest* from them the Bernal grant would need be upon the arroyo, where the decree places it, and far north of its surveyed location, which is *due west.*

The witness speaks of the "mission buildings" as something really, as well as apparently, only a part of and included in the "establishment of the mission of Dolores." See fols. 47 to 50.

There was also a church, which was a part of the "establishment," and the house Bernal is said to have built on his grant was, in the language of his witness, Peratta, "situated about three hundred varas from the church, on "the margin of a little creek," &c.

Now, as the creek is north of the mission land, it is clear that Bernal's grant could not be on the creek and still *west* of the establishment. See Folio 130.

There were also mayordomo houses, in one of which Bernal once resided. (Folio 45.) There was also a mill. (Folio 71.) The escolta (buildings for the guard) contained several houses. Fol. 83.

(2.) And further, that "the house of Bernal was in a "northwesterly direction, and about 100 varas from De Haro's "house." Folio 102 *and 49.*

These facts confirm the direction and distances of the decree. De Haro's was between Bernal's and the mission, and Bernal's was northwest from De Haro's. Bernal's was sixty varas from the southeast line of his lot, and was 100 varas

from De Haro's house, which was hence forty varas on to his own lot.

We find from other witnesses that the Bernal house was in the midst of his ground, 60 varas on one side and 40 on the other, and was near the stream. See fols. 111, 130 and 137.

The only witness that materially varies those distances or directions, is the claimant's witness, *Hernandez*.

He says:

5. "Did Bernal at that time point out to you the boundaries of his land?

Ans. "No; he only told me that he had two hundred "varas there."

(Answer objected to as incompetent.)

6. "How many varas, more or less, was the house from "the mission church, and in what direction?

Ans. "It may have been three hundred varas, more or "less, from the church, and towards the east.

7. "Was the house from the church in the direction of the "Presidio, Yerba Buena, or Mission Creek?

Ans. "It was back of the soldiers' quarters, near a creek, "and above a sausal." Fol. 142.

It will be seen that even this witness places the house *near the creek*, and that if he is to be followed, the Bernal grant, to our great relief, will be carried 300 varas away and "toward the east," instead of being located on our land, to the west of the mission.

The statement of this last witness, by which the grant is so removed from the intervenor's land, is confirmed by the *suppressed*, original petition, which removes it 400 yards or varas away. See folio ~~130~~ 185.

We therefore submit there is no foundation in these distances and directions for ignoring the original decree, or for wandering with the grant from the arroyo around upon our valuable land west of the mission; and that the more the testimony is examined, the more unjustifiable the arbitrary, final modification of the survey appears.

The attorney's purchase.—There is one piece of testimony in the case, from an unquestionable source, which happily

confirms all we have said as to the certainty and definiteness of all these boundaries, distances and directions, and also justifies us in saying that the most astute and interested minds did not succeed in discovering any difficulty about a survey, till the two Spanish widows in their weeds united their irresistible powers of "earnest protest," and poured out their inconsolable grief and exhaustless tears before the court, at the final hearing.

That evidence is found in a deed from poor Widow Carmen Sibrian de Bernal and her only or orphan child, José de Jesus Bernal, parties of the first part, to Henry W. Halleck, Archibald C. Peachy and Frederick Billings, (Widow Bernal's attorneys,) of the second part, dated the 21st April, 1856, for *one-half* of all the widow's blocks and acres taken under her grant. This deed was made after the decree of the District Court which affirmed the grant of the Commissioners, before the intervention.

Its language shows that the idea of deserting the arroyo and getting around upon our land to the west of the mission church, had not at that day even occurred to any of those enterprising and successful litigants. It is as follows:

"A solar or lot of *land, two hundred varas square, (in a "square form,)* near the Mission of Dolores, and to the "northwest of the establishment or buildings of said mission, "bounded *on the north by an arroyo;* the northeast corner "of said lot being about 150 varas, more or less, in a north-"west direction from the northeast corner of the said mission "establishment, and the southeast corner of said lot about "60 varas, more or less, from the northwest corner of said "mission establishment, being the same solar or lot of land "granted to José Cornelio Bernal by José Figueroa, Gov-"ernor of California, in the *year* 1834, the claim for which "is filed before the United States Board of Land Commis-"sioners, is numbered 671, which said claim has been con-"firmed by said Board of Land Commissioners, *and also by "the United States District Court.*" Fols. 173, 174.

III. The grant claimed is legally impossible, and must be regarded as void, and should not be confirmed.

(1.) The testimony on which the pretended grant was confirmed rather shows a promise to make a grant than any grant made. It is not proved that the grant was ever seen by any one. The whole testimony is inadequate to prove a grant and its loss, and may be seen at folios 5, 7 and 9.

(2.) The intervenor's testimony proves that *there is no record or documentary evidence whatever to be found in the proper records or custody, or elsewhere, of any such grant, or tending to show that there ever was any such grant*, but rather the contrary. See folios 90 to 92, and 153 to 155, and 157.

NOTE.—The fact that Bernal lived on a part of the lands attached to the mission, for a time, *and partly built on the same*, does not tend to prove he was claiming or living under his pretended grant, as he was an officer or agent ("mayordomo") of the mission, and as such lived upon and had a supervision of parts of its grounds; and, instead of continuing to occupy the pretended grant and house as if his own, he early in 1834, and when his office ceased, moved away and left it, and did not die till 1850. Indeed, he built the house *before he pretended to have had any grant.* Fols. 44, 45, 56, 57, 70, 72, 75, 81 and 82, 86, 132.

It is a significant fact that the original petition of Widow Bernal, *so prudently suppressed*, declares, not that Bernal, but that "the Rev. Fs. missionaries, &c., caused a house to "be erected upon the above mentioned land," &c. See fol. 186.

(3.) The Spanish Governor, in 1834, (when the grant is said to have been made, see folio 3,) *had no authority* to make such a grant. The secularization of the mission had not at that date taken place, and there *was no means of acquiring an individual grant in fee to the lands attached to them.*

At folios 154 to 158, proof is made of laws and documents which establish the last proposition.

The law in regard to granting these lands appears in Exhibits A. and B., folios 158 to 160.

Exhibit C., folios 160, 161, shows that on the 9th August, 1834, it was ordered that certain portions of the mission might be secularized, but not granted till after August 1, 1835. This authority was limited to *ten* missions, and there is no proof that the Mission Dolores was ever one of the ten that could be granted in 1835.

At folio 206, page 65, there is a document which clearly shows, that November 30, 1836, the Mission Dolores had not been secularized, so that grants therein could be made. And though Widow Bernal swears her husband *lost his papers*,

when she wanted to prove this suspicious grant, *that was never recorded*, she is yet not able to find that any grant *was ever recorded.* See folios 10, and 207, 208, 209.

From Exhibit D., folios 162 to 164, it appears very doubtful whether grants could be made in this mission as late as 1839, and even then grants of only fifty varas square were allowed.

And from Exhibit F., folio 165 to 167, it appears that the same José Cornelio de Bernal, whose widow claims this grant, could not get a grant in January, 1835, *because this same Governor Figueroa could not make a grant "in property."*

The great advantage of procuring a confirmation of this suspicious, impossible, fraudulent grant, *without opposition*, is certainly very apparent, and Widow Bernal must be very inappreciative indeed, if she is not everlastingly grateful to the very obliging District Attorney.

It is quite apparent now what a depth of meaning there is in the declaration of the learned District Judge, when he said, (folio 20,) "no argument was had in the case at the "hearing, *nor did the District Attorney suggest any objec-* "*tion to the validity of the grant.*" So he confirmed it, he says, "in the absence of any showing to the contrary."

Perhaps there never was a case where a mere "suggestion" of the law would have gone so far, or where so simple a "showing" of the evidence at hand would have been so fatal to a claimant.

It would seem preposterous to disregard the established rules of evidence as to boundary lines, and the overwhelming weight of testimony as to the real location of this pretended grant, to secure to Widow Bernal the best location and the largest possible space under it, in the lands of the Mission Dolores.

IV. The title, interest and claim of the intervenor:

The court finds, *as facts proved*, that the intervenor owns by grant from Bishop Allemany, certain lands which had been *patented* to the Bishop, and the claimants admit that *some of this land* is embraced in the survey as confirmed by the Commissioners, and it is further found by the court that the intervenor owns other land outside, taken under the *same deed* as the last, from said Bishop; and the intervenor objects to the survey as also interfering with that outside land. Fols. 216 and 217.

The Allemany grant is found at folios 201 to 203, and is admitted by stipulation, and the confirmation to him is

also admitted. It embraces the mission building, cemetery and garden.

At folios 148 to 151, the deed of the Bishop to Dehon, the grantor of the intervenor, is set out at length, and is dated 7th February, 1854.

NOTE.—We know nothing as to the parties or proceedings in the alleged confirmation of a portion of the Allemany tract; whether a confirmation of the whole was even asked for, or whether the Bishop held by different titles, or whether before or after his conveyance to Dehon, nothing appears.

(1.) Now it is also proved by the record that *all the land contained in the alleged Bernal grant, as finally located and confirmed by the court below, is covered by the Allemany deed, or by the other deeds to the intervenor,* (or his grantors,) *so that at the time of the proceedings on the Bernal petition, the intervenor,* (or his grantors,) *claimed the whole confirmed grant under conveyances thereof;* (and we have already said the grantors were in possession under these conveyances.)

(2.) The other deeds and titles, (besides the Allemany,) under which the intervenor claims, are as follows:

(*a.*) A. T. Moses and wife, by deeds of 20th September, 1851, and 28th July, 1853, conveyed the property to T. M. J. Dehon. Folio 184.

Dehon mortgaged this property in part to E. D. Sunning, 22d November, 1852, and in part to W. B. Johnson, 30th July, 1853.

These mortgages were foreclosed, and the decree of foreclosure was filed 12th July, 1856. Folio 184.

The foreclosed property was sold by the Sheriff, Scannell, of San Francisco, on the 23d June, 1857, and two deeds were given by the Sheriff therefor, to the purchaser, S. J. Bridge, which appear at folios 188 to 200.

(*b.*) On the 4th February, 1858, said Bridge deeded the said property to the intervenor, Theodore Dehon. Folios 166 to 172.

The identity of the land, as being the same deeded by the Sheriff aforesaid, appears at fol. 169.

(2.) That these several deeds cover all the property embraced in the final location and confirmation of the alleged Bernal grant, appears as follows:

Allemany Title.—Looking, first, at the small map, marked "No. 314, Dehon, Ex'r, p. 151," (that is, fol. 151,) it will be seen that Dolores-street runs along the east side; that the De Haro tract is indicated on the northeast corner, and the church and cemetery on the southeast corner.

Now, turning to the Record, folios 149 and 150, the boundaries of the Allemany conveyance are given, and they are easily traced on the map last referred to. The first boundary given, of 75 feet, is marked on the map 74 6 in. Tracing the line on the map, the deed will be seen to embrace the outside lines and most of the land laid down upon it, but does not embrace the parts marked "Cemetery."

Now, turning to map marked on the northwest corner, "No. 165, Matthewson, No. 1," and on the southwest corner, "No. 314, p. 127," it will be seen that this latter map is on a much smaller scale than the prior one; that is, like the other, has the "church" and "De Haro" tract distinctly marked; that the Bernal *final* survey is also marked, (being "2, Bernal tract,") and further, what is important to note, the tract on the last map, "4, Mission tract," *is the same as the tract marked "Cemetery," on the prior map.*

Now, comparing the two maps, it will be distinctly seen that the Allemany deed, which embraces the land to the north and west of this "*Cemetery*," or "*4, Mission tract*," *must embrace all the southern half or part of the final survey marked "2, Bernal tract," at least as high up as the south line of the De Haro tract;* for the north line of the Allemany tract nearly coincides with the south line of the De Haro tract.

Sheriff's Deed.—These boundaries appear in the decree of foreclosure, at folios 182 and 183.

Looking at the first of the two last cited maps, (marked 314, p. 151,) we find readily the line of Dolores-street where it is intersected by Centre-street, and where the boundary of the land starts. From that point the boundaries run a long way north, and then west, further than the western boundary of the Allemany deed, thence south, as far south at least as the old church, and thence east, and coming back to Dolores-street, at the old "church block," and thence north to the place of beginning.

It appears, at folio 183, that this last deed embraces about *one hundred and sixty acres*, while the Bernal grant only embraces six and 32-1000 acres. See folio 219.

It is, therefore, perfectly clear, that while the Allemany deed embraces about one-half of what has been finally surveyed to the Bernal grantees, that the Sheriff's deed actually embraces, *not only the whole of the Bernal final survey, but*

also the whole tract covered by the Allemany deed, and four times as much more.

NOTE.—It is a matter of familiar knowledge and general notoriety, that all the San Francisco pueblo lands, within the chartered limits of the city, as designated by the charter of the 15th April, 1851, were, by the provisions of an ordinance of the city, passed in 1855, and known as the "Van Ness Ordinance," and (being Ordinance No. 822) were donated to the parties then in actual possession.

This ordinance was confirmed by an act of the Legislature of California, passed on the eleventh day of March, 1858.

The lands about the Mission Dolores, including those claimed by Dehon, (the claimant,) and Guerrero, (that is, the lands now claimed by his widow, Palomares,) were an important and conspicuous part of these *pueblo* lands. Mr. Dehon continued his possession after the passage of that ordinance, and claims under it, to this time.

The legality of this ordinance and merits of the titles claimed under it, came before the Supreme Court of California, in the celebrated case of Hart against Burnett, in 1861, and by the decision in that case, the validity of that ordinance and the titles held thereunder were affirmed. The opinion of the court was given by Chief Justice Field, (now Mr. Justice Field of this court,) and contains a clear statement of many facts, which, if in proof in this case, would relieve the claimant of all solicitude as to the result of this appeal. And see the opinion of Field, J., in the case of The City of San Francisco *vs.* The United States.

This ordinance and the act of California confirming the same, are referred to, and the titles thereby confirmed to the parties in possession, are admitted and fully protected by the § 5 of the act of Congress of July 25th, 1864.

LAW.

The proper application of the law to the facts and proceedings herein recited, requires a correct appreciation of the basis and object of the intervention authorized by the statutes.

The appellant contends as follows:

I. The intervention authorized is *in favor* of a person *apparently* in danger and being prejudiced by proceedings pending for the location and confirmation of a pretended grant, unless such person is allowed to be heard in his own interest, and against the location or confirmation prayed for. the when the intervenor appears before the court, and asks

to be so heard for his own protection, the court must, *in the first instance, and once for all*, decide whether the intervenor shows such apparent rights or interests, in respect of the location or confirmation of such pretended grant, as to entitle him to be heard in regard thereto. If the court decides that the intervenor has such right to contest, then it is the duty of the court to make the proper order that the intervenor be heard.

And when the intervenor is once thus before the court, by its order, the questions to be examined and decided, and on which he is to be heard, are *not the nature or extent of the right, interest or title of the intervenor, but whether the pretended grant should be confirmed, and if so, its proper boundaries. On these questions the intervenor is entitled to be heard as if he were a real defendant in an action by the claimant.*

NOTE.—There is much reason to think that in no subsequent proceeding between the claimant and the intervenor, *can the legality or boundaries of the claimant's pretended grant be called in question.*

1. The first law bearing on the subject is that of 3d March, 1851. 9 *Statutes at Large*, 631.

This is the act which created the original Commission, before which the claimant began her proceeding.

It is very clear the object of this law is mainly to determine the ownership of California land, as between the private citizen and the United States only, and not as between rival individual claimants. The § 15 is very explicit on this subject. The proceedings affect "claimants only," and not "the interests of third persons."

Yet the theory of intervention is contained in this original act. The § 13 distinctly provides for the intervention of "any other person." It is not necessary here to inquire whether "any other person" so intervening under this act, and contesting the claimant's title, would thereafter, (as between the intervenor and the claimant,) be a "third person," under the § 15, whose interest would remain unaffected by the proceeding, because the intervention we have now to deal with was not under this act of 1851, but was under the act of the 14th June, 1860. *Statutes at Large*, vol. 12, p. 33.

Still a correct understanding of said § 13, and of the intervention there provided for, will facilitate a like understanding of the intervention provided for in the act of 1860.

This § 13 declares, that "if the title of the claimant,"

shall be contested, &c., then the contestant may petition, &c., "*distinctly setting forth his own title*," &c., and "praying the judge to hear and determine *the same*," &c.

This first part of the section reads as if the question to be determined after the intervention was not the title of the claimant, but of the intervenor. The fact that the intervenor's title is to be distinctly stated, favors this conclusion. It will be noticed, also, that the intervenor must have *a title* to intervene at all, and also that the intervention relates to contesting *a title*, and not a location or boundary.

It is, however, really equivocal in the first clause, whether "*the same*," which the judge is to determine, refers to the pretended title of the claimant, (which, it would seem, *should be* the matter controverted,) or to the title of the intervenor set forth in his petition. If it be the latter, then there can be no contest at all about the very matter, (the title of the claimant,) to contest which the intervention is allowed at all, but, upon the intervention, a new contest arises about another matter, to wit, the title of the intervenor. Hence, if the intervenor should not prove a good title, the claimant would succeed, though his title might also be equally effective, or he even prove none at all.

The second proviso of the section, however, seems to show pretty clearly that the real matter to be controverted after the intervention is the title of the claimant.

Perhaps it is the true construction of this section that the intervention allowed was limited to persons who claimed an *adverse title* to the very land *claimed and bounded in the petition* of the claimant.

2. It is obvious that so limited an intervention as the foregoing would in practice be very inadequate to protect the rights of third persons. There was needed an intervention which should

(1.) Clearly provide that the title of the claimant should be the subject of controversy.

(2.) That should allow his boundaries and location, as well as his title, to be contested.

(3.) That should permit all those who have an *interest* in the true location and boundaries of the pretended grant, and who have *equitable rights* to protect, to intervene, as well as those who establish an adverse *title*.

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(4.) That should allow those to intervene who, not able to establish any title, interest or right, as to the specific land *claimed* in the pretended grant, or *bounded* in the petition, yet have a title to, or interest in, *adjoining land*, upon which, (as has been the fact in this case,) the survey and location may be finally made, *although no notice was given, or danger of such a result could reasonably be apprehended in the early stages of the proceeding.*

3. Such ample and needed intervention is authorized in the law of June 14th, 1860.

The § 1 requires a publication in the newspapers of San Francisco of surveys and locations of private land claims, to the end that all persons whose interests need protection, may have full opportunity to appear.

The § 2 authorizes the court, in "the application of any party *interested*," to require any survey of a private land claim to be returned into court for examination, &c.

The § 3 *requires* the court to order the survey back into court if the applicant has such an *interest* in the survey as to make it just and proper, and he is allowed "to take testimony and to intervene *for his interest* therein;" and when the survey is once back into the court on the application of any third person, then "the judge shall proceed summarily "or otherwise, on affidavits, to inquire into the fact of such "interest, and to *determine* whether the applicant *has such* "*an interest* th ein, as, under the circumstances, to make it "proper that he should be heard in opposition to the sur- "vey," &c.

Then follows directions for further publication and for cases of several intervenors.

The § 4 then provides what shall and may be done after, as was the fact in this case, (folios 32 to 40,) the court has decided that the third person was entitled to be heard as an intervenor.

The court is to proceed to take testimony, (not about the *intervenor's title or interest* even,) but "as to any matters necessary to show the *true and proper location* of the claim." And if, in the opinion of the court, "the *location and sur-* "*vey* are *erroneous*, it is authorized to set aside or annul the "same, or correct and modify it," &c.

It will be seen that the court is authorized to correct or modify a survey or location, only when it is "*erroneous*," and *not at all for the reason that some other survey is said by somebody to be in the way of* the "*true* and proper location," nor because a poor or rich Spanish widow, with stream[illegible]

eyes, pathetically appeals, or, with loud assurance, "earnestly protests."

The § 5 also adds force to this construction of the other sections. After speaking of reforming and modifying the survey, it clearly indicates that the object is not to adjust equities or console widows, but to "determine the *true location* of the claim." This section, then, gives the appeal under which we are here. What, then, are we to consider but the "true location?"

We claim, therefore, that the court below mistook and misapplied the provisions of the law. That it was bound to declare the arroyo the north boundary, according to all the evidence and all the proceedings; and that when the intervenor was once allowed, (after the summary hearing on affidavits, showing him a proper party in interest to appear,) that all testimony and all rulings as to his interest, and especially as to his title, *were aside from the true issue, and without warrant in the statute.*

The § 9 repeals all inconsistent acts. There is an appeal provided to this court. The Fossat Case, 2 *Wallace R.* 708, 709.

NOTE.—The § 12 of the act of August 31st, 1852, has no bearing on the subject.

The survey in this case was made and approved in 1861, (fol. 33,) and hence is not within the decision in the case of United States *vs.* Sepulvado, 1 *Wallace*, 104.

4. The act of the 25th July, 1864, does not, perhaps, materially affect the question involved here.

The § 3 requires this court to hear pending appeals.

The § 1, as if designing to return to the theory of the act of 1851, and to qualify the very general language of the act of 1860, relative to the nature of the *interest* the intervenor must possess, declares he "must have an interest in the track "embraced in the survey, *or any part thereof.*"

Hence the intervenor in this case would have *full rights* of intervention, even though the act of 1864 applied to the controversy.

The § 7, even if applicable, would not approve the learned district judge's disregard of the boundaries of Widow Bernal's grant, but quite the contrary; for it says that it shall be the duty of the surveyor, "in making surveys of private land

"claims finally confirmed, *to follow the decree of confirmation* "*as closely as practicable, whenever such decree designates* "*the specific boundary of the claim ;*" which, applied to the facts of this case, seems to declare, "follow the arroyo, whatever the widows, who are parties, may say, or wherever widows, who are not parties, may have located their grants."

II. This court has clearly declared that the fact that the location required by the grant will overlap land before confirmed to others, is no reason why the boundaries of the grant should be disregarded.

Rodriquez *vs.* United States, 1 *Wallace R.* 591.

The disinclination of the court to encourage intervention under the repealed act of 1851, is stated in United States *vs.* Fossat, 20 *How. R.* 425. And Rodriquez *vs.* United States, 1 *Wallace*, 589, states the difficulties that attend the more extended intervention provided by the act of 1860.

It would seem that this court considered that, even under the act of 1851, the intervention of a third party raised all possible questions as to the title of the claimant, by or under the patent.

United States *vs.* White, 23 *How. R.* 249, 255.

1. Even if the contest here made, as between the title and interest of the claimant and the intervenor, to and in the land embraced in the alleged grant, as finally located, is not final and conclusive, so as to exclude any further litigation on the subject, it is yet very important, in view of the doctrine of this court, that when the plaintiff in ejectment has a confirmed grant, no mere claim to or unconfirmed grant of the same land can be interposed as a defence, or be otherwise available at law.

Grover *vs.* Mezes, 24 *How. R.* 268.
Singleton *vs.* Tonchard, 1 *Black's R.* 342.

III. It has been distinctly decided by this court that the authority given the District Court by the law of 1860, is not to modify the decree of confirmation, but only the survey and location made thereunder; whereas the modification made by the judge in this case *is really a modification of the decree*

itself, because its requirement that the arroyo should be the north line, is absolutely dispensed with.

Fols. 216, 218, 220, 221.
The Fossat Case, 2 *Wallace R.* 649, and 709, 710, 711, 714.

1. The true location of the grant, according to its provisions, must be followed in the survey, without regard to the place of residence or improvement, or the contract or other acts of the grantee under his grant.

The Sutler Case, 2 *Wallace R.* 562.

IV. If it was necessary for the purpose of this appeal, it could be maintained on the evidence in this case that the pretended grant must be regarded as void for want of any proper or adequate proof that it was ever legally made. No pretended grant can properly be confirmed, of which there is no record proof, and as to which there is no evidence of the taking of the requisite preliminary proceedings to its being conceded under the Mexican law.

These considerations require that no indulgence should be extended to these pretended grantees, and that all presumptions and constructions should be against them.

United States *vs.* Cambuston, 20 *How. R.* 59.
United States *vs.* Sutler, 21 *How. R.* 170.
United States *vs.* Castro, 24 *How. R.* 346.
United States *vs.* Knight, 1 *Black R.* 227.
United States *vs.* Valligo, 1 *Black R.* 541.
Pico *vs.* United States, 2 *Wallace R.* 279.

1. The intervenor having been proved to be in possession of the land confirmed to the claimant, at the date of the decree, it is to be presumed to be rightfully in his possession, (even though said grant be most favorably considered,) until the contrary is shown.

Ricard *vs.* Williams, 7 *Wheaton R.* 59.

V. The modification of the decree and survey should be reversed, and a survey should be ordered, having the arroyo for the north boundary of the land in a square form, according to the grant and the original decree, or the grant should be declared utterly void.

D. B. Eaton,
Of Counsel for Appellant.